

**DRAFT 6/6/18
FOR DISCUSSION PURPOSES ONLY**

GRANT AWARD AGREEMENT
(Panama City Port Authority)

THIS GRANT AWARD AGREEMENT (“**Agreement**”), made and entered into this _____ day of _____, 2018, by and between TRIUMPH GULF COAST, INC., a Florida not-for-profit corporation (“**Triumph**”), and PANAMA CITY PORT AUTHORITY, a dependent special district of the City of Panama City (“**Authority**”).

WITNESSETH:

WHEREAS, pursuant to its authority under Section 288.8017, Florida Statutes, Triumph has agreed to make a Grant (as defined below) to the Authority, on and subject to the terms and conditions set forth in this Agreement, to provide partial funding for the following projects at the Authority’s East Terminal property (collectively, the “**Project**”): (i) demolition of the existing warehouse and 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 generally described as Phase III in the Authority’s Application for Funds submitted to Triumph on February 23, 2018, which Application is hereby incorporated herein by reference (the “**Grant Application**”).

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) provide for funding of the Grant to reimburse the Authority for a portion of the costs of design, permitting, and construction of the Project, (ii) state the terms and conditions upon which the Grant will be provided, 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 the Authority in the aggregate maximum amount of Ten Million Dollars (\$10,000,000.00) (the “**Grant**”) to provide partial funding for the Project.

3. **Disbursement of Grant:**

3.1 **Grant as a Reimbursement.** The Authority shall first pay the contractors, materialmen, and other vendors performing work on the Project under the construction contracts for the Project (each, a “**Contract**,” and collectively, the “**Contracts**”) as invoices are received in accordance with the Contracts. The Authority shall then submit to Triumph for approval, at the address set forth in Section 9.10 below, a written application for reimbursement (“Application for Reimbursement”) for up to fifty percent (50%) of the

amount of the invoice(s) actually paid to the contractor, materialman, or vendor under the Contracts; provided, however, that in no event shall the cumulative reimbursements made by Triumph exceed the \$10,000,000.00 maximum amount of the Grant. Each Application for Reimbursement shall be on the form attached hereto as **Exhibit "A"** and incorporated herein and shall have attached thereto (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. The Authority shall not submit more than four (4) Applications for Reimbursement in any single calendar month. None of the amounts paid by the Authority in connection with the invoices submitted in an Application for Reimbursement and then reimbursed by Triumph shall also have been or will in the future be in any manner (a) reimbursed, returned, refunded, rebated, or otherwise credited to, the Authority by any contractor, materialman, vendor, or any other person or entity, or (b) paid, reimbursed, returned, refunded, rebated, or otherwise credited to the Authority by the State of Florida, the United States, the County of Bay, or the City of Panama City, 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 the Authority shall not receive payments, refunds, reimbursements, rebates or credits from any sources in amounts collectively exceeding 100% of the invoices under each Contract.

3.2 Conditions to Triumph's Obligations to Disburse the Grant. Within forty-five (45) days of receipt of an Application for Reimbursement, Triumph shall either approve or disapprove of the Application for Reimbursement in a written notice to the Authority. If Triumph approves the Application for Reimbursement, then it shall disburse the approved amount to the Authority within thirty (30) days after delivery of the notice of approval. If Triumph disapproves the Application for Reimbursement, Triumph shall state in the notice of disapproval the reasons for such disapproval. If the stated reasons for disapproval can be cured by the Authority's submittal of missing or corrective items, the Authority shall have thirty (30) days following receipt of the notice of disapproval to submit such missing or corrective items. If Triumph fails to approve or disapprove of the Application for Reimbursement within forty-five (45) days of receipt, such Application for Reimbursement shall be deemed disapproved.

Reasons for disapproving an Application for Reimbursement must include one or more of the following:

- (a) Missing or incomplete documentation required under Section 3.1(i)-(iv) above;
- (b) The Application for Reimbursement seeks reimbursement for more than fifty percent (50%) of the amounts actually paid to contractors, materialmen, or vendors under the Contracts;

- (c) The amount requested for disbursement under the Application for Reimbursement, together with all amounts previously disbursed under the Grant, would exceed the \$10,000,000.00 maximum amount of the Grant;
- (d) The Authority 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 the Authority of any of its duties or obligations which may jeopardize or adversely affect the Project, this Agreement, or disbursement of the Grant;
- (f) The Authority has taken any action pertaining to the Project which, under this Agreement, requires the approval of Triumph, and the Authority failed to obtain such approval;
- (g) There has been a violation of the prohibited interests provisions of Section 8.2 of this Agreement;
- (h) The Authority is in violation, default, or breach of or under any provision of this Agreement;
- (i) The Authority is in breach of any representation or warranty contained in this Agreement;
- (j) Any federal or state agency providing financial assistance to the Project has revoked, suspended, or terminated that financial assistance to the Project, including, but not limited to, the grant funds described in Section 5(i) below;
- (k) The Authority has abandoned or, before completion, discontinued the Project and/or the other Port Projects (as defined in Section 4.2 below), or for any reason the commencement, prosecution, or timely completion of the Project and/or the other Port Projects by the Authority will be rendered improbable, infeasible, impossible, or illegal;
- (l) All or any portion of the requested reimbursement includes reimbursement for improvements that are outside the scope of the Project that is contemplated under the Budget (as defined below); or
- (m) One or more of the Contracts have been modified, amended, or terminated without the prior consent or approval of (i) Triumph, or (ii) the State of Florida, or (iii) any executive agency thereof that is subject to budget oversight authority of the Florida Legislature; provided, however, that any change order under \$25,000 shall not be subject to approval under this Agreement.

4. Completion of the Project:

4.1 **General Requirements.** The Authority shall commence, and complete the Project and the other Port Projects, with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions of this Agreement, and all applicable laws. The Authority agrees to complete the Project and the other Port Projects on or before December 31, 2020 (the "**Completion Deadline**"). If the Authority does not complete the Project and the other Port Projects by such date, Triumph's obligation to make the Grant will expire unless an extension of the time period is requested by the Authority and granted in writing by Triumph prior to such expiration date. 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 the Authority, 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 the Authority's control, and other such events or circumstances which are beyond the control of the Authority despite all reasonable efforts to prevent, avoid, delay, or mitigate such causes, and to include acts of God (such as epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts and adverse weather conditions).

4.2 **Total Project Cost.** The total estimated cost of the Project is \$23,000,000.00 and the total estimated cost of the Project and the other improvements described as Phases I, II, and IV in the Grant Application (collectively, the "Port Projects") is \$61,864,000. The total estimated cost of the Project is based upon the budget set forth in **Exhibit "B"** attached to and incorporated into this Agreement (the "**Budget**"). The Authority shall monitor the Budget and submit an amended Budget to Triumph in the event that the Budget increases or decreases by greater than five (5) percent in the aggregate of the total cost of the Project. Any increase or decrease by greater than five (5) percent in the aggregate of the total cost of the Project as compared to the most recently approved Budget shall require approval of Triumph. Triumph shall have fifteen (15) days from the receipt of a proposed amended Budget to notify the Authority of its approval or disapproval of such change. If Triumph fails to approve or disapprove of the amended Budget within such fifteen (15) day period, the amended Budget shall be deemed approved as submitted. If the Authority fails to obtain Triumph's approval or deemed approval, that failure shall be sufficient cause for nonpayment by Triumph as provided in Section 3.2(f). Using its own funds and funds from other grants, the Authority agrees to bear the entire cost and expense of the Project and the other Port Projects, 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 reimburse the Authority, on and subject to the terms and conditions set forth herein, for a portion of the costs and expenses theretofore paid by the Authority at the time(s) of such reimbursement. The schedule of completion of the Project and the other Port Projects shall be developed by Triumph and the Authority as Contracts and change orders are approved as provided herein, and executed by the Authority, as such schedule shall be

updated and revised from time to time by Triumph and the Authority (the "**Completion Schedule**"). The Authority shall take all steps reasonably necessary to maintain the Completion Schedule. The Authority shall notify Triumph of any anticipated changes to the Completion Schedule and shall work with Triumph to update and revise the Completion Schedule such that it reflects the anticipated schedule of completion of the Project and other Port Projects.

4.3 Requirement to Provide Reports/Triumph Right to Inspect. The Authority shall submit to Triumph such data, reports, records, contracts and other documents relating to the Project as Triumph may require. During construction of the Project, the Authority shall on a quarterly basis submit to Triumph an activity report the progress of construction; once construction is completed, the Authority shall, on an annual basis by October 31 of each year, submit to Triumph an activity report on the operations of the Project and the progress of satisfaction of the performance metrics set forth in Section 7.3 below, which reports shall include, among other things, audited financial statements. The activity report will include details of the progress of the Project towards completion. Triumph shall have the right, at any time and from time to time upon reasonable notice to the Authority, to access the Project and inspect the work being performed or as completed.

4.4 Insurance. At all times during the term of this Agreement, the Authority shall keep and maintain casualty insurance on all equipment and improvements that constitute the Project, the cost of which was in whole or in part reimbursed 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, the Authority shall either replace the equipment or improvements or reimburse Triumph to the extent the Grant was used to purchase or construct such equipment or improvements.

4.5 Environmental Regulations. The Authority covenants and agrees that the Project will be carried out in conformance with all applicable environmental regulations including the securing of any applicable permits. The Authority will be solely responsible for any liability in the event of non-compliance with applicable environmental regulations, including the securing of any applicable permits.

4.6 Contracts of the Authority: Triumph shall have the right to review and approve any and all proposed Contracts and proposed change orders to said Contracts with respect to the Project before the Authority executes or obligates itself in any manner; provided, however, that any Contract or change order that was approved by (i) the State of Florida, or (ii) any executive agency thereof that is subject to budget oversight authority of the Florida Legislature shall not require Triumph's approval. Any change order to any Contract under \$25,000 shall also not be subject to approval under this Agreement. Triumph shall have fifteen (15) days from receipt of a proposed Contract or change order to notify the Authority of its approval or disapproval of such Contract or change order. If Triumph fails to approve or disapprove of a Contract or change order within such fifteen (15) day period, the subject Contract or change order shall be deemed approved. If the Authority fails to obtain approval from Triumph or the State of Florida or any executive agency thereof that is subject to budget oversight authority of the Florida Legislature, that failure shall be sufficient cause for nonpayment by Triumph as provided in Section 3.2(f). Triumph also reserves unto itself the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of same.

4.7 **Compliance with Consultants' Competitive Negotiation Act.** The Authority 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.

4.8 **Completion of Dredging Project.** If for any reason the COE (as defined in Section 5(h) below) does not fund the Dredging Project (as defined in Section 5(i) below), the Authority shall complete the Dredging Project at its own cost and expense. The Authority acknowledges and agrees that the necessity of completion of the Dredging Project is a material factor in Triumph's approval of the Grant, and that the failure of the Dredging Project to be completed within three (3) years from the date of this Agreement shall be a material default by the Authority under this Agreement.

5. **Representations and Warranties of the Authority.** The Authority 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 the Authority submits an Application for Reimbursement, and as of the dates on which the Authority receives any disbursement of the Grant:

(a) **Organization; Power and Authority.** The Authority is a _____, duly organized, validly existing in good standing in the State of Florida, and has all requisite power and authority to own, lease, and operate its properties and to carry on its business as currently conducted.

(b) **Authorization and Binding Obligation.** The Authority 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 the Authority. This Agreement has been duly executed and delivered by the Authority and, assuming the due authorization, execution, and delivery of this Agreement by Triumph, constitutes the legal, valid, and binding obligation of the Authority, enforceable against the Authority 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).

(c) **No Violations.** The execution and delivery by the Authority 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 the Authority's certificate of incorporation, certificate of formation, bylaws, or similar 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 the Authority's loan agreements, indentures, material agreements or other material

instruments or (iii) violate any applicable law or regulation. The Authority has not been convicted of a “public entity crime” (as such term is defined in Section 287.133 of the Florida Statutes) nor has the Authority been placed on the “discriminatory vendor list” (as such term is defined in Section 287.134 of the Florida Statutes). Neither the Authority nor any person or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the Authority, 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 the Authority 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.

(d) **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 business, assets, operations or financial condition of the Authority, or the Project, in each case, since the date of the Grant Application.

(e) **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 authority is pending or, to the knowledge of the Authority, threatened by or against the Authority 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 business, assets, operations, or financial condition of the Authority, the Project, or the Authority’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 the Authority, threatened by or against the Authority 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 the Authority which, individually or in the aggregate, could reasonably be expected to have a material and adverse effect on the business, assets, operations, or financial condition of the Authority, the Project, or the Authority's ability to perform its obligations under this Agreement. Neither the Authority, 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 the Authority (including any zoning or building ordinance, code or approval, or any building permit where such violation or default would be material to the Authority), or is in default with respect to any judgment, writ, injunction, decree, or order applicable to the Authority of any governmental authority, 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 business, assets, operations, or financial condition of the Authority, the Project, or the Authority'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.

(f) **Express Representations and Warranties: No Material Misstatements.**

All statements made by the Authority in the Grant Application were true, complete, and correct. Triumph shall be deemed to have relied upon the express statements, representations and warranties set forth herein and in the Grant Application notwithstanding any knowledge on the part of Triumph of any untruth of any such representation or warranty of the Authority expressly set forth in this Agreement, regardless of whether such knowledge was obtained through Triumph's own investigation or otherwise, and regardless of whether such knowledge was obtained before or after the execution and delivery of this Agreement. No information, report, financial statement, exhibit or schedule (other than forward-looking statements and projections) furnished by the Authority 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.

(g) **Authority Funds.** The Authority has on hand as its own funds of not less than \$10,000,000.00 dedicated to completion of the Project.

(h) **Dredging Project.** The Authority is working with the Mobile District Army Corps of Engineers ("COE") to deepen the East Channel (the "**Dredging Project**") and expects that the final design and construction of the Dredging Project will be included in the COE's Fiscal year 2019 FY work plan. The Dredging Project will be managed by the COE with the Authority paying 35% of the costs. In the unlikely event that the Dredging Project is not ultimately funded by the COE, the Authority will pursue construction of the Dredging Project under a contributed funds agreement with the COE.

(i) **State Awards.** The Authority is a recipient of awards from the State of Florida in the aggregate amount of \$21,690,000.00, to be used for various aspects of the Port Projects, and such awards have not been, and the Authority has received no notice that such awards might be, suspended, terminated, revoked or otherwise delayed or encumbered.

(j) **Bonus or Commission.** The Authority 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.

6. **Accounting and Records.**

6.1 **Establishment and Maintenance of Accounting Records.** The Authority shall establish separate accounts to be maintained within its existing accounting system or establish

independent accounts with respect to the Project. 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 the Authority's general accounting records and the Project records, together with supporting documents and records, of the Authority and all consultants performing work on the Project and all other records of the Authority 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.

6.2 **Audits.** The administration of the Grant and any Federal or State resources awarded to the Authority may be subject to audits and/or monitoring by Triumph. The following 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 or State awards or limit the authority of Triumph or any state agency inspector general, the State of Florida Auditor General, or any other state or federal official. The Authority shall comply with all audit and audit reporting requirements as specified below.

(a) In addition to reviews of audits conducted in accordance with Section 215.97, Florida Statutes, monitoring procedures to monitor the Authority'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, the Authority agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by Triumph. The Authority 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) The Authority, a non-state entity as defined by Section 215.97(2)(n), Florida Statutes, as a recipient of state financial assistance awarded by Triumph through this Agreement may be subject to the following requirements:

(i) In the event the Authority meets the audit threshold requirements established by Section 215.97, Florida Statutes, the Authority must have a State single or project-specific audit conducted for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. In determining the state financial assistance expended in a fiscal year, the Authority shall consider all sources of state financial

assistance, including state financial assistance received from Triumph by this Agreement, other state agencies and other non-state entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a non-state entity for Federal program matching requirements;

(ii) In connection with the audit requirements, the Authority shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(e), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General;

(iii) In the event the Authority does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, the Authority is exempt for such fiscal year from the state single audit requirements of Section 215.97, Florida Statutes. However, the Authority must provide a single audit exemption statement to Triumph no later than nine months after the end of the Authority's audit period for each applicable audit year. In the event the Authority does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, in a fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the Authority's resources (*i.e.*, the cost of such an audit must be paid from the Authority's resources obtained from other than State entities);

(iv) In accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, copies of financial reporting packages required by this Agreement shall be submitted to Triumph at the address set forth in Section 9.10 below and to the State of Florida Auditor General, Local Government Audits/342, 111 West Madison Street, Room 401, Tallahassee, FL 32399-1450.

(v) Any copies of financial reporting packages, reports or other information required to be submitted to Triumph shall be submitted timely in accordance with Section 215.97, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable;

(vi) The Authority, when submitting financial reporting packages to Triumph for audits done in accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-

profit organizations), Rules of the Auditor General, should indicate the date the reporting package was delivered to the Authority in correspondence accompanying the reporting package;

(vii) Upon receipt, and within six months, Triumph may review the Authority's financial reporting package, including 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 the Authority fails to have an audit conducted consistent with Section 215.97, Florida Statutes, Triumph may take appropriate corrective action to enforce compliance;

(viii) As a condition of receiving the Grant, the Authority shall permit Triumph, or its designee, DFS or the Auditor General access to the Authority'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;

(ix) The Authority 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. The Authority 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.

6.3 Public Records. The Authority shall 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. It is expressly understood that Triumph may terminate this Agreement for the Authority's refusal to comply with the applicable provisions of Chapter 119 of the Florida Statutes. In the event that the Authority 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, the Authority shall provide written notice to Triumph of such request as soon as practicable after the Authority's receipt of such request. If the Authority submits records to Triumph 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 Authority prior to submittal to Triumph. In the event that Triumph's claim of exemption asserted in response to the Authority's assertion of confidentiality is challenged in a court of law, the Authority 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 7.3 below) and performance metrics under Section 7.3 below shall be deemed “public records” under Section 119.011 of the Florida Statutes.

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

7.1 Termination, Suspension, or Expiration of Project. If the Authority abandons or, before completion, suspends or discontinues the Project, or fails to complete the Project by Completion Date set forth in Section 4.1 above (subject to *force majeure* events), 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 shall have the right, by written notice to the Authority, to (i) suspend any further disbursements 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, then in accordance with Section 7.4 below the Authority shall upon written demand by Triumph repay to Triumph all portions of the Grant theretofore disbursed to and received by the Authority.

7.2 Breach of Agreement. In the event the Authority shall (i) have knowingly 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 made in this Agreement, and/or (iii) have breached, violated, or is in any way in default under any of its obligations under this Agreement, then in accordance with Section 7.4 below the Authority shall upon written demand by Triumph repay to Triumph all portions of the Grant theretofore disbursed to and received by the Authority.

7.3 Performance Metrics. In the event the Authority fails to timely achieve at least one of the three (3) following performance metrics set forth in subparagraphs (a), (b), and (c) below, then in accordance with Section 7.4 below the Authority shall upon written demand by Triumph repay to Triumph all portions of Grant theretofore disbursed to and received by the Authority:

(a) Performance Metric #1:

(i) Between April 28, 2018 and the Initial Jobs Deadline Date (as defined below), the Project will have created (1) at least 148 New Jobs (as defined below), AND (2) 250 Additional Direct Jobs (as defined below); AND

(ii) all of the 148 New Jobs and 250 Additional Direct Jobs described above shall have been maintained for at least three (3) years after the Initial Jobs Deadline Date.

As used herein, “**Initial Jobs Deadline Date**” means the date which is three (3) years after the Warehouse Completion Date (as defined below).

As used herein, the term “**Warehouse Completion Date**” means the date on which the warehouse portion of the Project as evidenced by a certificate of occupancy.

As used herein, a “**New Job**” shall mean a job that (a) has an average wage of not less than \$46,892, (b) was created after April 28, 2018, (c) resulted in a net increase in overall employment on or at the Port of Panama City (the “**Port**”), and (d) is performed by a full-time salaried employee of the Authority or other employer on or at the Port, or a full-time equivalent employee of the Authority or other employer on or at the Port who works at least 35 paid hours per week, performing tasks directly related to the products or services typically performed at the Port, including, but not limited to, cargo handling, stevedores, longshoremen, customs brokers, traffic clerks, CBP officers, vessel agents, mechanics, planners, line handlers, tugboat crewmen, Bar Pilots, security guards, and administrative personnel. Jobs are not considered New Jobs if they are (A) moved from an affiliate or subsidiary of the Authority to the Authority; (B) jobs that are assumed by the Authority as part of, or in connection with, a merger or asset or equity acquisition, (C) moved to the Port by the Authority from another business unit or location owned or operated by the Authority or an affiliate or subsidiary, 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), (D) moved from any other business unit or location of the Authority or any of its affiliates or subsidiaries in Florida, unless the relocated positions are back-filled with net new-to-Florida full-time-equivalent jobs paying at least the wage of the transferred position(s); or (E) temporary construction jobs involved with the construction or renovation of facilities in connection with the Project, or temporary or seasonal jobs associated with cyclical business activities or to substitute for permanent employees on a leave of absence.

As used herein, an “**Additional Direct Job**” shall mean a job created outside of the Port after April 28, 2018 resulting in a net increase in overall employment in Panama City Port-related manufacturing and distribution that requires close proximity to a port with the capacity to support the needs of the manufacturers or distributors.

The calculation of the number of New Jobs and Additional Direct Jobs shall be made by Rick Harper or another similarly qualified economist or analyst selected by Triumph, using substantially the same methodology as used in that certain economic impact report for the Project prepared by Martin Associates and referenced in the Grant Application.

(b) **Performance Metric #2:** The annual tonnage handled by the Authority will have increased an average of 6% per year between October 1, 2018 and September 30, 2023. The calculation of annual tonnage and the increase therein shall be made by Rick Harper or another similarly qualified economist or analyst selected by Triumph.

(c) **Performance Metric #3:** Gross revenues of the Authority will have increased an average of 4% per year between October 1, 2018 and September 30, 2023. The calculation of gross revenues and the increase therein 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, the Authority shall within ten (10) days of such request, make available for review and copying such data, reports, tonnage information, revenue information, payroll records, financial statements and reporting, and other documents, instruments, and information (collectively, “**Back-up Data**”) as Triumph requires in order to determine whether the Authority achieved of any or all of the above performance metrics. The Authority’s refusal or failure to timely provide any requested Back-up Data shall, for purposes of Section 7.4 below, be deemed the Authority’s failure to timely achieve all of the above performance metrics.

7.4 **Clawback of Grant:** Upon the occurrence of any of the events described in Sections 7.1 or 7.2 above, or in the event the Authority fails to timely achieve at least one of the three (3) performance metrics described in Sections 7.3(a), (b), and (c) above, then, upon written demand by Triumph, the Authority shall within thirty (30) days of such demand repay to Triumph all amounts of the Grant that were theretofore disbursed to and received by the Authority, together with interest at the rate *Wall Street Journal Prime Rate* plus three percent (3%) per annum on such amounts to be repaid. Such interest shall accrue commencing on the date of such written demand by Triumph and shall continue to accrue until the amount demanded is repaid in full. Notwithstanding the foregoing, Triumph shall have the discretion to waive, reduce, extend, or defer any amounts due under this Section 7.4 if it determines in its sole and absolute discretion that (i) a breach of a representation and warranty herein or in the Grant Application, or a breach, violation, or default of or under any other provision of this Agreement, was not material in nature, (ii) based on quantitative evidence, the performance metrics were not achieved due to negative economic conditions in the Authority’s business beyond its reasonable control, (iii) the Authority made a good faith effort to achieve full performance of at least one of the performance metrics and its failure to do so does not substantially frustrate the general purpose of the Grant, and/or (iv) based on quantitative evidence, the effects of a named hurricane or tropical storm, or specific acts of terrorism, adversely affected the Authority’s ability to achieve at least one of the performance metrics.

8. **Restrictions, Prohibitions, Controls, and Labor Provisions:**

8.1 Equal Employment Opportunity. In connection with the carrying out of the Project, the Authority shall not discriminate against any employee or applicant for employment

because of race, age, creed, color, sex or national origin. The Authority 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.

8.2 Prohibited Interests. The Authority 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 the Authority, or any business 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) The Authority 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 the Authority by any person who at any time during the immediately preceding two (2) years was an officer, director or employee of the Authority.

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

8.3 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 herefrom.

8.4 Lobbying. Pursuant to Sections 11.062 and 216.347 of the Florida Statutes, the Authority shall use no portion of the Grant for the purpose of lobbying the Florida Legislature, executive branch, judicial branch, any state agency, or Triumph.

8.5 Grant Funds. The Authority 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 disburse 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 disbursement to the Authority and/or other awardees of grants, Triumph shall not be obligated to make disbursements hereunder and shall therefore not be deemed to be in breach of this Agreement. To the extent some funds are available to for disbursement to the Authority and

other awardees of grants, Triumph shall allocate such funds among the Authority and such other awardees in such amounts as it shall determine in its sole and absolute discretion.

9. Miscellaneous Provisions:

9.1 Triumph Not Obligated to Third Parties. Triumph shall not be obligated or liable hereunder to any party other than the Authority.

9.2 When Rights and Remedies Not Waived. In no event shall the making by Triumph of any payment to the Authority 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 the Authority, 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.

9.3 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.

9.4 Contractual Indemnity. To the extent provided by Section 768.28, Florida Statutes, the Authority 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 act, error, omission, or negligent act by the Authority, its agents, or employees, during the performance of the Agreement, except that neither the Authority, 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 the Agreement. Nothing in this Agreement shall be construed as a waiver by the Authority 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 Authority in the performance of services required under this Agreement, Triumph will immediately forward the claim to the Authority. The Authority 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 the Authority in the defense of the claim or to require that the Authority defend Triumph in such claim as described in this section. Triumph's failure to promptly notify the Authority of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by Authority. Triumph and the Authority 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.

9.5 Non-Assignment. The Authority 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 be entitled to assign or transfer its rights, duties, or obligations under this Agreement to another governmental entity in the State of Florida upon

giving prior written notice to the Authority. Any attempted assignment of this Agreement or any of the rights hereunder in violation of this provision shall be void *ab initio*.

9.6 Florida Substitute Form W-9. The Authority shall register its W-9 on the Florida Department of Financial Services' website (<http://flvendor.myfloridacfo.com>) and register as a vendor on the MyFloridaMarketPlace website (<http://myfloridamarketplace.com>). Notwithstanding anything in this Agreement to the contrary, Triumph shall not authorize the disbursement of any portion of the Grant to the Authority unless and until the Authority has a verified Substitute Form W-9 on file with the Florida Department of Financial Services and is registered as a vendor with the Florida Department of Management Services.

9.7 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.

9.8 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.

9.9 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 the Authority 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.

9.10 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) when transmitted via facsimile to the number set out above if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), (iii) 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 (iv) 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 9.10:

If to Triumph:

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

If to the Authority:

Panama City Port Authority
One Seaport Drive
Panama City, FL 32401
Attention: Executive Director

9.11 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.

9.12 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.

9.13 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida.

9.14 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 these presents be executed, the day and year first above written.

AUTHORITY:

PANAMA CITY PORT AUTHORITY,
a dependent special district of the City
of Panama City

By: _____
Print Name: _____
Title: _____

TRIUMPH:

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

By: _____
Print Name: _____
Title: Chairman

By: _____
Print Name: _____
Title: Treasurer

ATTEST:

By: _____
Print Name: _____
Title: Secretary

EXHIBIT "A"

Form of

Request for Disbursement of Grant

Pursuant to Section 3.1 of that certain Grant Award Agreement dated _____, 2018 (the "Agreement"), by and between the Panama City Port Authority (the "Authority") and Triumph Gulf Coast, Inc. ("Triumph"), in order to reimburse the Authority for a portion of amounts paid by the Authority for construction of the Project (As defined in the Agreement"), the Authority hereby requests a disbursement from the Grant (as defined in the Agreement) as follows:

1. Invoices Paid by the Authority (List All Invoices that are the subject of this Request):

Contractor/Materialman/Vendor	Amount of Invoice
_____	\$ _____
_____	\$ _____
_____	\$ _____
Total Paid by the Authority:	\$ _____

2. Amount of Disbursement from Grant Requested (must not exceed 50% of the Total in Item 1 above):

\$ _____

3. (a) Amounts Previously Disbursed Under the Agreement: \$ _____
(b) Amount of Disbursement Requested in Item 2 Above: \$ _____
(c) Total Disbursed from Grant if this Request is Approved
(add (a) and (b) above): \$ _____
(d) Remaining Amount of Grant to be disbursed
(insert \$10,000,000 minus the amount in (c) above): \$ _____

4. Attached hereto are (1) true, correct, and complete copies of the invoices referenced in Item 1 above, (2) true, correct, and complete copies of cancelled checks or wire confirmations evidencing that the Authority has paid in full all of the invoices referenced in Item 1 above, and (3) photographs and/or reports evidencing the completion of the work that is the subject

of the invoices referenced in Item 1 above. The following additional information is also attached:

5. None of the amounts paid by the Authority in connection with the invoices described in Item 1 above for which reimbursement 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, the Authority by any contractor, materialman, vendor, or any other person or entity, or (b) paid, reimbursed, returned, refunded, rebated, or otherwise credited to the Authority by the State of Florida, the United States, the County of Bay, or the City of Panama City, or any agency or instrumentality of any of the foregoing, whether under any grant or loan program or other method of contribution.
6. None of the Contracts under which amounts paid by the Authority in connection with the invoices described in Item 1 above have heretofore been modified, amended, or terminated, except as otherwise approved by Triumph.

The undersigned, in his capacity as Executive Director of the Authority, 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 reimbursement is consistent with the purposes of the Grant

Date: _____

Print Name: _____

EXHIBIT "B"

PROJECT BUDGET

<u>Description of Projects to be Partially Funded by Triumph</u>	<u>Estimated Budget</u>
Demolition of existing warehouses, construction of 100,000 square feet of new warehouse space including site work, utilities, fire protection, offices, bathrooms, and the related engineering services.	\$6,500,000
Construction of outside cargo staging yards, including site work, drainage, paving, fencing, lighting, and the related engineering services.	\$2,500,000
Construction of internal service roads and additional rail infrastructure, including switches, road crossings, and the related engineering.	\$2,000,000
Reconstruction of bulkhead including a new bulkhead wall, utilities, drainage, apron overlay, and the related engineering services.	\$12,000,000