

TERM SHEET  
 FOR  
 GRANT AWARD CONTRACT  
 BETWEEN  
 TRIUMPH GULF COAST, INC.  
 AND  
 THE CITY OF PANAMA CITY AND EASTERN SHIPBUILDING  
 (Proposal #55)

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

GRANT AMOUNT	Twenty Million Dollars (\$20,000,000)
PURPOSE:	To provide partial funding for infrastructure improvements including platens, dredging, bulkhead installation, launchways, equipment, and warehouse facilities and improvements to be installed on an easement owned by the City (dominant tenement) located at Eastern Shipbuilding Group's ("ESG") Nelson Street facility in Panama City (servient tenement), all as further described in the City's and ESG's Application for Funds submitted to Triumph (the "Project").
MATCHING FUNDS	Triumph's approval of the grant and its obligation to disburse the grant is expressly contingent upon the City and/or ESG having \$50,405,000 on hand, in firmly committed and appropriated funds, or in value previously contributed to the Project, substantially as follows: (1) from City and Bay County: \$450,000, (2) from the State of Florida: \$15,500,000, (3) from the US Maritime Administration: \$530,000, and from ESG:

	\$33,925,000 (the “Matching Funds”).
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<p><b>FUNDING DISBURSEMENT MECHANISM</b></p>	<p>The grant funds shall be allocated among the various components of the Project in the amounts set forth on Exhibit “A” attached hereto.</p> <p>At the end of each month, the City shall submit to Triumph an application for disbursement (“Application for Disbursement”) related to costs incurred to that point for each eligible element of the Project, along with supporting documentation and invoices evidencing completion. Each Application for Disbursement shall request no more than 77% of the costs that are the subject of the Application (with the City incurring the remaining 23%). Documentation and invoices shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof, based on deliverables as established by the Agreement. Within forty-five (45) days of receipt of an Application for Disbursement, Triumph shall either approve or disapprove of the Application for Disbursement in a written notice to the City. If Triumph approves the Application for Disbursement, then it shall disburse the approved amount to the City within thirty (30) days after delivery of the notice of approval. If Triumph disapproves the Application for Disbursement, Triumph shall state in the notice of disapproval the reasons for such disapproval.</p> <p>Triumph will honor requests for disbursement to the City; however, Triumph may elect by notice in writing not to make a payment if:</p> <ul style="list-style-type: none"> <li>(a) Missing or incomplete documentation;</li> <li>(b) The Application for Disbursement seeks disbursement for more than the amounts actually paid to contractors, materialmen, or vendors under applicable contracts (“Contracts”);</li> <li>(c) The amount requested for disbursement under the Application for Disbursement, together with all amounts previously disbursed under the Grant, would exceed the \$20,000,000 maximum amount of the Grant</li> <li>(d) The City made a 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 to Triumph;</li> <li>(e) There is any pending litigation with respect to the performance by the City of any of its duties or obligations which may jeopardize or adversely affect the Project, the Agreement, or the disbursement of the grant;</li> <li>(f) There is any pending litigation regarding Triumph’s legal, statutory, or other authority to enter into a Grant Award Agreement with the City and ESG for the contemplated Project.</li> </ul>
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	<ul style="list-style-type: none"> <li>(g) The City shall have taken any action pertaining to the Project which requires the approval of Triumph, and the City has failed to obtain such approval;</li> <li>(h) The terms of the Grant Award Agreement (or the parties conduct thereunder) place(s) Triumph, the City, or ESG is in violation or alleged violation or any federal, state, or local law;</li> <li>(i) There has been any violation of the prohibited interests (conflicts of interest) provisions of the Agreement;</li> <li>(j) The City is in violation, default, or breach of or under any provision of the Agreement;</li> <li>(k) The City is in breach of any representation or warranty contained in the Agreement;</li> <li>(l) ESG and/or any federal, state or local agency or municipality (including the City) providing financial assistance to the Project as stated in the Agreement has revoked, suspended or terminated that financial assistance to the Project, including but not limited to Matching Funds;</li> <li>(m) The Matching Funds are not being used for the intended purposes and in the amount and at the times as set forth in a schedule of expenses approved by Triumph</li> <li>(n) The City has abandoned or, before completion, discontinued the Project, or for any reason the commencement, prosecution or timely completion of the Project will be rendered improbable, infeasible, impossible, or illegal; or</li> <li>(o) All or any portion of the requested disbursement includes costs that are not shown or contemplated under the budget attached to the Agreement; provided, however, that any change order under \$25,000 shall not be subject to approval under the Agreement.</li> <li>(p) One or more of the Contracts have been modified, amended, or terminated without the prior consent or approval of Triumph.</li> </ul> <p>Upon completion of the Project, the City shall send Triumph a notice certifying that elements of the Project have been completed in accordance with the plans and specifications. Within thirty (30) days after receipt of certification of completion, Triumph and/or its agents, engineers, and consultants shall have the right to inspect the Project elements to determine if they were in fact completed in accordance with the plans and specifications. If so, Triumph shall disburse final payment of the grant to the City within thirty (30) days of such determination; if not, no grant funds shall be disbursed unless and until the City promptly corrects any deficiencies and Triumph thereafter determines that it was finally completed in accordance with the plans and specifications. In connection with its inspection of the Project, the City shall make available to Triumph copies of any and all invoices, contracts, plans and specifications, and other documentation relating to the construction and completion of the Project.</p>
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<p><b>FAILURE TO OBTAIN USCG CONTRACT</b></p>	<p>If ESG does not win the United States Coast Guard (“USCG”) contract for offshore patrol cutters (“OPC”) 10 – 25, then the City can retain any Triumph grant funds received to date as long as the improvements located on the City’s easement at ESG Nelson Street Facility is devoted exclusively to local, state, and/or federal shipbuilding or repair and at least the 900 Net New Jobs described below are maintained at the ESG Nelson Street Facility.</p>
<p><b>ELIGIBLE COSTS/ DOCUMENTATION</b></p>	<p>The City shall seek disbursement only for costs of the Project construction as shown or contemplated under the budget attached to the Agreement. All amounts paid by the City with respect to the Project shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail for the nature and propriety of the charges. Any check or order drawn by the City with respect to any item which is or will be chargeable against the Project account will be drawn only in accordance with a properly signed voucher then on file in the office of the City 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.</p>
<p><b>AGREEMENTS BETWEEN CITY AND ESG</b></p>	<p>Concurrently with the execution of the Agreement, the City and ESG shall enter into the following agreements, each of which shall be in form and substance satisfactory to Triumph:</p> <ol style="list-style-type: none"> <li>1. A Public-Private Infrastructure Project Agreement, (See s. 311.091 Florida Statutes (2018), pursuant to which the City contracts with ESG to, among other things, assume all duties and obligations of permitting, designing, constructing, operating, managing, and maintaining the Project, as long as the City shall not be released of any of its obligations under the Agreement.</li> <li>2. An Easement Agreement, pursuant to which ESG grants to the City an easement(s) at its Nelson Street Facility for the purposes of building, operating, managing, and maintaining the Project and the USCG Project (as defined below).</li> <li>3. A Comprehensive Agreement for Shipbuilding Infrastructure Development, complaint with s.255.065 Florida Statutes (2018), pursuant to which the City agrees to undertake and complete the</li> </ol>

	<p>Project [must commit to state and/or federal shipbuilding for at least 20 years; purchase of improvements by ESG at FMV at end of lease].</p> <p>4. Lease by City, as lessor, and ESG, as lessee, of easement area for the Project and committing the property exclusively to local, state and/or federal government shipbuilding for at least 20 years. The Lease must provide that ESG will pay fair value for the term of the Lease; however, ESG may utilize any credit owed it for the easement rights granted to the City and any obligations undertaken pursuant to the documents referenced herein. The Lease may provide ESG a purchase option for the improvements at end of lease so long as the option is allowed under Florida Law; including but not limited to Florida Statutes Chapters 255, 288, and 311.</p>
<p>MAINTENANCE OF RECORDS:</p>	<p>The City’s and ESG’s records of costs incurred shall be maintained in the Project account and made available upon request to Triumph at all times during the period of the Agreement and for eight (8) years after the expiration of any clawback period. Copies of these documents and records shall be furnished to Triumph upon request by the City and ESG. Records of costs incurred include general accounting records and the Project records, together with supporting documents and records, of the City, ESG, and all sub-consultants performing work on the Project and all other records of the City, ESG, and sub-consultants considered necessary by Triumph for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of any clawback period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.</p>
<p>AUDITS:</p>	<p>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 or representatives of the federal government and their duly authorized representatives shall have access to any of the City’s and ESG’s books, documents, papers, and records, including electronic storage media, as they may relate to the Project, for the purposes of conducting audits or examinations or making excerpts or transcriptions.</p>

<p><b>TERMINATION OR SUSPENSION OF PROJECT:</b></p>	<p>If the City abandons or, before completion, finally discontinues the Project; or for any other reason, the commencement, prosecution, or timely completion of the Project by the City is rendered improbable, infeasible, impossible, or illegal, Triumph will, by written notice to the City, suspend any or all of its obligations under the Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected, or Triumph may terminate any or all of its obligations under the Agreement. Upon receipt of any final termination or suspension notice, the City 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, the 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 the 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 Agreement. ESG agrees to be jointly and severally liable to Triumph for the return of any grant funds deemed to be returnable to Triumph.</p>
<p><b>APPROVAL OF CONTRACTS/COMPLIANCE WITH LAWS:</b></p>	<p>The City and ESG shall comply with all applicable laws regarding third party contracts, public contracting, procurement, labor laws, civil rights laws, etc. Such compliance shall include competitive bidding.</p> <p>Triumph shall have the right to review and approve any consultant and construction Contracts that will be paid for, in whole or part, with Triumph funds. Triumph shall have fifteen (15) days from receipt thereof to approve or disapprove such contracts; Triumph’s failure to approve or disapprove within said fifteen (15) days shall be deemed approval.</p>
<p><b>INSURANCE:</b></p>	<p>At all times during the term of the Agreement, the City shall maintain or cause to be maintained casualty insurance on all improvements, the cost of which was, in whole or in part, reimbursed using Triumph grant funds, to the extent such improvements can in fact be insured.</p>
<p><b>PERFORMANCE METRICS:</b></p>	<p>The Agreement shall contain the following performance metrics for the Project:</p> <p>On the earlier to occur of:</p> <p>(1) ESG cuts steel and begins work on assembly of the ship that will</p>

	<p>be OPC 10, or</p> <p>(2) ESG delivers OPC 9 to the USCG.</p> <p>at least 900 “<b>Net New Jobs</b>” (as defined below) shall have been created at the ESG Nelson Street Facility over and above the 500 jobs that existed at the ESG Nelson Street Facility on the date of submittal of the Grant Application, and such 900 Net New Jobs shall have been maintained for a period of three (3) years after the earlier to occur of items (1) or (2) above.</p> <p>As used herein, a “<b>Net New Job</b>” shall mean a job that was (a) created after the effective date of the Agreement, (b) resulted in a net increase in overall employment on or at the ESG Nelson Street Facility related specifically to contracts obtained with respect to the United States Coast Guard Offshore Patrol Cutter (“USCG OPC Project”), and (c) is performed by a FTE (2080 man-hours/year) at the ESG Nelson Street Facility specific to the USCG OPC Project Jobs are not considered Net New Jobs if they are (A) moved from other workplaces in Florida, unless the relocated positions are back-filled with net new-to-Florida full-time-equivalent jobs paying at least the wage of the transferred position(s); or (B) temporary construction jobs involved with the construction of the Project, or temporary or seasonal jobs associated with cyclical business activities or to substitute for permanent employees on a leave of absence.</p>
<p><b>CLAWBACK:</b></p>	<p><b>Clawback from City and ESG</b></p> <p>Any grant funds disbursed by Triumph to the City shall be subject in being repaid (“clawed back”) in the event (i) the City made any materially false certification or representation to Triumph in connection with the Grant Application, under the Agreement, and/or in connection with the disbursement of the grant, and/or (ii) the City breached, violated, or is in any way in default under any of its obligations under the Agreement, and/or (iii) the City fails to achieve at least one of the three performance metrics described above. Triumph shall have the discretion to waive, reduce, extend, or defer any amounts due under the clawback provisions if (i) it determines in its sole and absolute discretion that, based on quantitative evidence, the performance metrics were not achieved due to negative economic conditions beyond the City’s control, (ii) it determines in its sole and absolute discretion that the City made a good faith effort to achieve full performance metrics and its failure to fully achieve the performance 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</p>

	<p>effects of a named hurricane or tropical storm, or specific acts of terrorism, adversely affected the City’s ability to achieve the performance metrics. Interest shall accrue on the clawback amounts due at the rate of <i>Wall Street Journal Prime</i> plus 3%, commencing thirty (30) days after the date of demand by Triumph.</p> <p>Concurrently with the execution of the Agreement, ESG shall execute an agreement in form and substance satisfactory to Triumph pursuant to which ESG shall be directly liable for all of the clawback obligations. The City shall also agree to cooperate with Triumph in all reasonable respects in connection with Triumph’s enforcement of the clawbacks against ESG and shall share equally in the cost of any enforcement action.</p> <p>If Triumph ceases to operate before the end of the job maintenance period, the rights to clawback enforcement are assignable by Triumph to any other governmental person or entity.</p>
<p>AVAILABILITY OF GRANT FUNDS</p>	<p>Funds for the grant are not and shall not be deemed a general obligation of the State of Florida, nor is the grant or the 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 City and/or other awardees of grants, Triumph shall not be obligated to make disbursements under the Agreement and shall therefore not be deemed to be in breach of the Agreement. To the extent some funds are available to for disbursement to the City and other awardees of grants, Triumph shall allocate such funds among the City 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 the Agreement for failure to fully fund the grant.</p>
<p>PUBLIC ACCESS TO PROJECT</p>	<p>The Agreement shall contain provisions to ensure public access or viewing of operations, such as tours of portions of the Project facilities, or elevated viewing platforms, for educational or tourism purposes, to the extent that such activities are consistent with national security interests.</p>
<p>COOPERATION REGARDING TRAINING</p>	<p>Triumph, the City, and ESG shall work collaboratively with each other and/or with appropriate state and local agencies and share costs of identifying and developing training to meet the needs of ESG and other firms that participate in ship building maintenance, repair and overhaul.</p>
<p>INDEMNIFICATION</p>	<p>The City and ESG shall jointly and severally indemnify and hold Triumph harmless from and against any and all claims, losses, damages, costs, charges, or expenses (including, but not limited to, attorneys’ fees and costs) arising out of or related to the Agreement, the grant, and/or the Project, including, but not</p>



	limited to, claims, lawsuits and other legal challenges to the awarding of the grant and/or the validity or enforceability of the Agreement.
OTHER TERMS AND CONDITIONS:	The Agreement shall contain such other terms and conditions as required by Triumph and its counsel.

By signing below, the parties are indicating a willingness to proceed with having a draft Agreement prepared on substantially the terms set forth herein. However, as indicated above, this Term Sheet is merely intended for discussion and negotiation purposes only and (a) does not constitute a grant, or an approval of a grant, by Triumph to the City, and (b) does not create any binding obligations on Triumph or the City 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 City with respect to any grant must be contained in a definitive Agreement, approved by the Board of Directors of Triumph and by City and executed by Triumph and the City. At any time prior to such execution of an Agreement, either Triumph or the City may terminate negotiations, and upon such termination neither party shall have any liabilities or obligations to the other.

Dated: \_\_\_\_\_, 2018

Triumph Gulf Coast, Inc.  
a Florida not-for-profit corporation

City of Panama City

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Eastern Shipbuilding  
Group

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

