

GRANT AWARD AGREEMENT
(City of Panama City - Eastern Shipbuilding/Project #185)

THIS GRANT AWARD AGREEMENT (this “**Agreement**”), made and entered into as of June __, 2019 (the “**Effective Date**”), by and among TRIUMPH GULF COAST, INC., a Florida not-for-profit corporation (“**Triumph**”), the CITY OF PANAMA CITY, a Florida municipal corporation (the “**City**”), and EASTERN SHIPBUILDING GROUP, INC., a Florida corporation (“**ESG**”).

WITNESSETH:

WHEREAS, pursuant to its authority under **Section 288.8017, Florida Statutes**, Triumph has agreed to make a Grant (as defined below) to the City, on and subject to the terms and conditions set forth in this Agreement, 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 ESG’s Nelson Street facility in Panama City (servient tenement) (collectively, the “**Project**”), all as further described in the ESG’s and the City’s Application for Funds submitted to Triumph, as amended (the “**Grant Application**”), which Grant Application is incorporated herein by reference. In the event of a conflict between a provision of the Grant Application and a provision of this Agreement, the provision of this Agreement shall control.

NOW, THEREFORE, for and in consideration of the agreements, covenants and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound hereby, agree as follows:

1. **Purpose of Agreement.** The purpose of this Agreement is to (i) award the Grant to the City, (ii) state the terms and conditions upon which the Grant will be disbursed, 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 City in the aggregate maximum amount of Twenty Million and 00/100 Dollars (\$20,000,000.00) (the “**Grant**”) to provide partial funding for the Project.

3. **Contingencies for Grant.** Triumph’s approval of the Grant is expressly contingent upon all of the following occurring concurrently with or prior to the execution of this Agreement:

3.1 The estimated total planning and construction cost of the entire Project is \$70,380,000, with the Grant constituting \$20,000,000 of that amount. Accordingly, the City must

secure cash or other funding commitments for the Project totaling not less than \$50,380,000, of which \$33,900,000 must be committed by ESG. No Grant funds shall be disbursed to the City unless and until the City has provided Triumph with satisfactory evidence that there are firm and enforceable funding commitments for the Project totaling not less than \$50,405,000, of which not less than \$33,900,000 has been committed by ESG.

3.2 Reserved.

3.3 The City and ESG shall have entered into an Easement Agreement (the “**Easement Agreement**”) pursuant to which ESG grants to the City easements at its Nelson Street Facility for the purposes of building, operating, managing, and maintaining the Project and the USCG Project (as defined below).

3.4 The City and ESG shall have entered into a Comprehensive Agreement for Shipbuilding Infrastructure Development (the “**Comprehensive Agreement**”) pursuant to which the City agrees to undertake and complete the Project, and which (i) commits the Nelson Street Facility to state and/or federal shipbuilding for at least 20 years; (ii) requires ESG to purchase from the City specified improvements at fair market value at end of the Lease (as defined below); and (iii) 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 this Agreement.

3.5 The City, as lessor, and ESG, as lessee, shall have entered into a Lease (the “**Lease**”) of the easement area under the Easement Agreement for the Project. The Lease shall, among other things, (i) commit the Nelson Street Facility to state and/or federal shipbuilding for at least 20 years; and (ii) require ESG purchase from the City specified improvements at fair market value at end of the Lease. The rental rate under the Lease shall require that ESG will pay fair market value rent for the term of the Lease; however, ESG may utilize any credit owed it for the easement rights granted to the City under the Easement Agreement 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.

4. Disbursement of Grant:

4.1 Disbursement. Subject to the satisfaction of the contingencies set forth in Sections 3.1 through 3.5 above and in Section 4.2 below, the Grant will be drawn down in accordance with the projected budget attached hereto as **Exhibit “A”** and incorporated herein (the “**Budget**”). The parties acknowledge that the Budget may be updated and modified from time to time as the design and construction of the Project proceed, based on prudent financial management, the requirements and limitations of the various funding sources, and other considerations. As provided herein, the Grant shall be used only to pay a portion of the amounts due and owing from time to time by the City under and in accordance with the Construction Contract (as defined in Section 5.3 below). Not more than once per calendar month, the City shall submit an application for disbursement in the form of **Exhibit “B”** attached hereto (an “**Application for Disbursement**”) requesting a disbursement not exceeding seventy-seven percent (77%) the amount of the invoice(s) actually paid to the contractor under the Construction Contract; provided, however, that in no event shall the cumulative reimbursements made by Triumph exceed the \$20,000,000 maximum amount of

the Grant. Each Application for Disbursement shall be accompanied by (i) documentation evidencing the extent of completion of each eligible element of the Project and the cost of each eligible element of the Project incurred to that point, (ii) an updated Budget, if applicable, (iii) an updated construction schedule, if applicable, (iv) progress reports from the architect/engineer, (v) (if available) aerial photographs, (vi) documentation and invoices in detail sufficient for a proper pre-audit and post-audit thereof, including, but not limited to, records of the Project account described in Section 7.1 below, and (vii) documentation itemizing the cumulative amounts paid to date with respect to the Project both from the Grant and other funding sources (including the Matching Funds).

4.2 Conditions to Triumph's Obligations to Disburse the Grant. Within forty-five (45) days of receipt of an Application for Disbursement under Section 4.1 above, 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. If Triumph disapproves the Application for Disbursement, Triumph shall state the reasons for such disapproval. The City shall have thirty (30) days to address the reasons for disapproval and submit documentation for reconsideration of the Application for Disbursement. If Triumph fails to approve or disapprove of the Application for Disbursement within forty-five (45) days of receipt, such Application for Disbursement shall be deemed disapproved.

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

- (a) Missing or incomplete documentation required under Section 4.1 above, as identified in writing by Triumph;
- (b) The Application for Disbursement seeks disbursement for more than the amounts actually invoiced by the under a Contract;
- (c) The Application for Disbursement seeks disbursement for an amount in excess of the amount permitted by the 77% limitation set forth in Section 4.1 above;
- (d) 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;

- (e) The City and/or ESG 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;
- (f) There is any pending litigation against the City and/or ESG (1) which may in Triumph's reasonable discretion jeopardize or adversely affect or delay the Project, and/or (2) which involves or otherwise relates to this Agreement, the awarding of the Grant, the disbursement of the Grant, the Comprehensive Agreement, the Easement Agreement, and/or the Lease;
- (g) There is any pending litigation against Triumph (1) which in Triumph's reasonable discretion may jeopardize or adversely affect or delay the Project, and/or (2) which involves or otherwise relates to this Agreement, the disbursement of the Grant, the Comprehensive Agreement, the Easement Agreement, and/or the Lease;
- (h) Any permit applicable to the Project has been suspended, revoked, terminated, or has expired, without having been reinstated or renewed, or is in any other manner no longer in force or effect;
- (i) The City and/or ESG has taken any action pertaining to the Project which, under this Agreement, requires the approval of Triumph, and the City failed to obtain such approval;
- (j) Either the City and/or ESG has violated any of the provisions of Sections 9.1, 9.4, and/or 9.5 of this Agreement;
- (k) Either the City and/or ESG is in material violation, default, or breach of or under any provision of this Agreement;
- (l) Either the City and/or ESG is in material violation, default, or breach of or under any provision of the Comprehensive Agreement, the Easement Agreement, and/or the Lease;
- (m) Either the City and/or ESG is in breach of any representation or warranty contained in this Agreement;
- (n) The City, ESG, and/or any federal, state, or local agency providing funding for the Project has revoked, suspended, or terminated such funding, including, but not limited to, the Matching Funds, without such funding having been reinstated or renewed or replaced by another funding source;

- (o) The City and/or ESG has abandoned or, before completion, discontinued the Project, or for any reason (other than *force majeure* as defined herein) the commencement, prosecution, or timely completion of the Project by the City and/or ESG is rendered improbable, infeasible, impossible, or illegal for any reason other than *force majeure* as defined in this Agreement;
- (p) All or any portion of the requested disbursement includes disbursement for improvements that are outside the scope of the Project that is contemplated under the Grant Application and/or a Contract; or
- (q) A Contract has been materially modified, amended, or terminated without the prior consent or approval of Triumph as required by Section 5.8 below. A change order of \$25,000 or less shall not constitute a material modification.

5 Completion of the Project:

5.1 General Requirements. The City and ESG shall commence, and complete the Project with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions of this Agreement, the Grant Application, the Construction Contract, and all applicable laws. The City and ESG agree to complete the Project within six (6) years after the Effective Date (the “**Completion Deadline**”). If the City and ESG do not complete the Project by such date, Triumph’s obligation to make future distributions of the Grant will expire unless an extension of the time period is requested by the City and ESG 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 City and ESG, including, but not limited to, acts of God (such as epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts and adverse weather conditions), 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 or temporary substantial increases in the cost of labor, material, or supplies, or any acts or omissions of third parties not within the City’s and ESG’s control, a full or partial shutdown of the federal government, and other such events or circumstances which are beyond the control of the City and ESG despite all reasonable efforts to prevent, avoid, delay, or mitigate such causes. For purposes of this Agreement, the Project shall be deemed complete when the entire Project has been substantially completed in substantial compliance with the plans and specifications, and certificates of occupancy for all buildings comprising the Project have been issued by the appropriate governmental authority.

5.2 Total Project Cost. The estimated total cost of the entire Project is \$70,380,000, of which a maximum of \$20,000,000 shall be provided by the Grant, and the balance of \$50,380,000 shall be provided using the following matching funds (collectively, the “**Matching**

Funds): (a) the City and Bay County shall pay using \$450,000 of its own funds, (b) the State of Florida shall pay \$15,500,000 from its own funds, (c) the United States Maritime Administration shall pay \$530,000 using its own funds, and (e) ESG shall pay \$33,900,000 using its own funds. Using the Grant, the Matching Funds, and funds from other sources, the City and ESG agree to bear the entire cost and expense of the Project, including but not limited to, all costs and all expenses in excess of the total estimated cost of the Project, it being expressly understood and agreed that the Grant shall operate only to disburse to the City, on and subject to the terms and conditions set forth herein, a portion of the costs and expenses to be paid by the City at the time(s) of such disbursement. The City and ESG shall take all steps reasonably necessary to maintain the Budget. The City and ESG shall notify Triumph of any anticipated changes to the Budget and shall work with Triumph to update and revise the Budget such that it reflects the anticipated schedule of completion of the Project.

5.3 Competitive Bids for the Project. The City and ESG shall issue an invitation to bid to solicit competitive bids for materials and labor for the construction portion of the Project pursuant to Sections 180.24 and 255 et seq., Florida Statutes, or pursuant to the Consultant's Competitive Negotiation Act as set forth in Section 287.055, Florida Statutes, as applicable. ESG may submit a bid and compete for the award of aspects of the Project just as any other proposed vendor. In awarding the contract (the "**Construction Contract**"), the City and ESG shall award the contract to the lowest, responsive bidder considering the selection criteria contained within the invitation to bid. Upon determination as to which vendor is the lowest, responsive bidder, the City and ESG shall submit to Triumph for its approval, the name of the proposed vendor and all documentation relating to the evaluation of the various bids submitted. Triumph shall have the right to review and approve all Contracts (as defined in Section 5.8 below) in accordance with Section 5.8 below.

5.4 Requirement to Provide Reports/Triumph Right to Inspect. The City and ESG shall submit to Triumph such data, reports, records, contracts and other documents relating to the Project as Triumph may require. During the construction portion of the Project, the City and ESG shall on an annual basis submit to Triumph an activity report which outlines the progress of construction and the cost of the Project incurred to date, and shall submit to Triumph on an annual basis audited financial statements within six (6) months following the end of the their respective fiscal year. Once construction is completed and Triumph has approved such completion in accordance with the provisions set forth hereinbelow, and until such time as ESG has achieved the performance metrics described in Section 8.4 below, the City and ESG shall, on an annual basis, ~~within six (6) months following the end of their respective fiscal~~ on or before October 31 of each year, submit to Triumph audited financial statements for ~~such~~ their immediately preceding fiscal year. Upon completion of the Project, the City and ESG shall send Triumph a notice certifying that the Project was completed in accordance with the Construction Contract, and all applicable standards, statutes, rules and regulations. 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 to determine if it was in fact completed in accordance with the Construction Contract. If so, and subject to Triumph's receipt of an approved Application for Disbursement in accordance with Sections 4.1 and 4.2 above, Triumph shall disburse a final payment of the Grant to the City; if not, no Grant funds shall be disbursed unless and until the City and/or ESG promptly corrects any deficiencies and Triumph thereafter determines that it was finally completed in accordance with the Construction Contract. In connection with its

inspection of the Project, the City and ESG 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. Triumph and its employees, agents, and contractors shall have the right, at any time and from time to time during normal working hours and upon reasonable notice to the City and ESG, to access the Project and inspect the work being performed or as completed; provided that Triumph and its employees, agents and contractors shall at all times (i) comply with all applicable security and safety rules and regulations and (ii) be accompanied by the respective representatives of the City and ESG and any contractors.

5.5 Insurance. At all times during the term of this Agreement, the City and/or ESG shall maintain or cause to be maintained casualty insurance on all improvements, fixtures, and equipment, the cost of which was, in whole or in part, paid using the Grant, to the extent such improvements can in fact be insured. The Lease shall require the City and/or ESG to maintain casualty insurance on improvements, fixtures, and equipment commencing upon the date of beneficial occupancy by ESG during the term of the Lease.

5.6 Compliance with Applicable Laws, Including Environmental Regulations. The City and ESG shall obtain all required clearances and permits required for construction from the appropriate permitting authorities. The City and ESG each covenants and agrees that construction will be carried out in conformance with all applicable federal, state and local statutes, rules and regulations, and standards, including, but not limited to, applicable environmental laws and regulations including the securing of any applicable permits. The City and ESG shall be solely responsible for any liability in the event of non-compliance with applicable environmental regulations relating to the construction of the Project.

5.7 Plans and Specifications. Triumph shall have the right to review the plans and specifications for the Project and any material changes to said plans and specifications solely to confirm that the Project described in the plans and specifications is consistent with the project described in the Grant Application, such confirmation not to be unreasonably withheld, conditioned or delayed. Triumph shall have fifteen (15) days from each receipt of the plans and specifications or proposed material change to notify the City and ESG of its confirmation or denial that the Project described in the plans and specifications is consistent with the project described in the Grant Application. If Triumph issues a denial, such denial shall be in writing and shall state the specific manner in which the Project described by the plans and specifications is not consistent with the project described in the Grant Application. If Triumph fails to deliver such confirmation or denial within such fifteen (15) day period, the plans and specifications or proposed material change shall be deemed confirmed by Triumph. If the City and ESG fail to obtain such confirmation as provided herein, that failure shall be sufficient cause for nonpayment by Triumph as provided in Section 4.2(h).

5.8 Contracts: Triumph shall have the right to review and approve any and all (i) contracts in connection with the Project, including, but not limited to, Construction Contract, Easement Agreement, the Comprehensive Agreement, and the Lease (each, a “Contract,” and collectively, the “Contracts”) before the City or ESG executes or obligates itself in any manner, and (ii) proposed amendments, waivers, terminations, or other changes to the Contracts before the City or ESG executes or obligates itself in any manner. Triumph shall have fifteen (15) days from receipt of a proposed Contract or amendment, waiver,

termination, or change order to notify the City of its approval or disapproval thereof. If Triumph fails to approve or disapprove of a Contract or amendment, waiver, termination, or change within such fifteen (15) day period, the subject Contract or amendment, waiver, termination, or change order shall be deemed approved. 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.

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

5.10 Responsibility for Payments. ESG and the City acknowledge and agree that (i) the Grant shall be disbursed solely to the City and that the City is solely responsible for then using the Grant funds to complete the Project in accordance with the Grant Application, this Agreement, the Construction Contract, the Comprehensive Agreement, the Easement Agreement, the Lease, and other Contracts, and (ii) the City and ESG are solely responsible for payments that become lawfully due and owing to any agents, employees, contractors, and consultants in connection with the Project, including, but not limited to, payments under the Construction Contract and other Contracts. The City and ESG shall, jointly and severally, indemnify and hold Triumph harmless from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to any denial or reduction of any Application for Disbursement submitted by the City to Triumph for disbursement of the Grant under this Agreement.

5.11 Workers' Compensation Insurance. The City and/or ESG shall carry or cause each of its contractors and consultants to carry and keep in force Workers' Compensation insurance as required under the Florida Workers' Compensation Law (Chapter 440, Florida Statutes).

6. Representations and Warranties of the City and ESG. The City and ESG hereby jointly and severally make 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 City submits an Application for Disbursement, and as of the dates on which the City receives any disbursement of the Grant:

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

carry on its affairs as currently conducted

(b) **Authorization and Binding Obligation.** Each of the City and ESG 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 each of the City and ESG. This Agreement has been duly executed and delivered by each of the City and ESG and, assuming the due authorization, execution, and delivery of this Agreement by Triumph, constitutes the legal, valid, and binding obligation of each of the City and ESG, enforceable against the City and ESG 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 City and ESG of this Agreement and the performance by them of the transactions contemplated hereby does not (i) conflict with or result in a breach of any provision of the City's or ESG'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 City's or ESG's loan agreements, indentures, material agreements or other material instruments or (iii) violate any applicable law or regulation. Neither the City nor ESG has been convicted of a "public entity crime" (as such term is defined in Section 287.133 of the Florida Statutes) nor has the City or ESG been placed on the "discriminatory vendor list" (as such term is defined in Section 287.134 of the Florida Statutes). Neither the City nor ESG 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 City or ESG 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 City nor ESG nor any of their respective 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 assets, operations or financial condition of the City or ESG, 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 agency is pending or, to the knowledge of the City or ESG, threatened by or against the City or ESG or against any of their respective properties or assets, which, individually or in the aggregate, could reasonably be expected to result in a material and adverse effect on the

assets, operations, or financial condition of the City, ESG, the Project, or the City's or ESG's ability to perform its obligations under this Agreement. No state or federal criminal investigation, 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, the United States Department of Justice, or any other prosecutorial or law enforcement authority is pending or, to the knowledge of the City or ESG, threatened by or against the City or ESG or any of their elected officials, shareholders, officers, or directors. No permanent injunction, temporary restraining order or similar decree has been issued against the City or ESG which, individually or in the aggregate, could reasonably be expected to have a material and adverse effect on the assets, operations, or financial condition of the City, ESG, the Project, or the City's or ESG's ability to perform its obligations under this Agreement. Neither the City nor ESG, nor any of their respective 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 City or ESG (including any zoning or building ordinance, code or approval, or any building permit where such violation or default would be material to the City or ESG), or is in default with respect to any judgment, writ, injunction, decree, or order applicable to the City or ESG 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 assets, operations, or financial condition of the City, ESG, the Project, or the City's or ESG's ability to perform their obligations under this Agreement 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 City and ESG in the Grant Application were true, complete, and correct in all respects. 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 City and/or ESG 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 City and/or ESG 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 misstatement of fact or omitted or omits to state any fact necessary to make the statements contained herein or therein, in the light of the circumstances under which they were made, not misleading.

(g) Matching Funds. All Matching Funds are available for the Project in firm and enforceable commitments.

(h) **Bonus or Commission.** Neither the City nor ESG has 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.

(i) **Intentionally Omitted.**

(j) **Comprehensive Agreement.** The Comprehensive Agreement is a duly authorized, valid, and binding agreement that complies with Section 255.065 Florida Statutes (2018) and is enforceable in accordance with its terms.

(k) **Lease and Easement Agreement.** Each of the Lease and the Easement Agreement is a duly authorized, valid, and binding agreement that is enforceable in accordance with its terms.

7. Accounting, Audits, and Records.

7.1 Establishment and Maintenance of Accounting Records. Each of the City and ESG 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 “**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 eight (8) 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 City's and ESG's general accounting records and the Project records, together with supporting documents and records, of the City and ESG and all consultants performing work on the Project and all other records of the City, ESG, 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 eight (8) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

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

(a) In addition to reviews of audits conducted in accordance with Chapter 218, Florida Statutes, monitoring procedures to monitor the City'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 City and ESG agree to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by Triumph. The City and ESG further agree 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 City, as a recipient of state financial assistance awarded by Triumph through this Agreement, and ESG as a subsequent recipient of such funds from the City, may be subject to the following requirements:

(i) Chapter 218, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) of the Rules of the Auditor General.

(ii) In accordance with Chapters 10.550 (local governmental entities) of the 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 10.10 below and to the State of Florida Auditor General, Local Government Audits/342, 111 West Madison Street, Room 401, Tallahassee, FL 32399-1450;

(iii) The City and ESG, when submitting financial reporting packages to Triumph for audits done in accordance with Chapters 10.550 (local governmental entities) of the Rules of the Auditor General, should indicate the date the reporting package was delivered to the Auditor General in correspondence accompanying the reporting package;

(iv) Upon receipt, and within six months, Triumph may review the City's and ESG'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 City or ESG fails to have an audit conducted consistent with Chapter 218, Florida Statutes, Triumph may take appropriate corrective action to enforce compliance; and

(v) As a condition of receiving the Grant, the City and ESG shall permit Triumph, or its designee, DFS or the Auditor General access to the City's and ESG'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.

(c) The City and ESG shall each retain sufficient records demonstrating its compliance with the terms of this Agreement for a period eight (8) 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 City and ESG shall each 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 eight (8) years from the date the audit report is issued unless extended in writing by Triumph.

7.3 Public Records. The parties acknowledge that the City and Triumph are each public entities and, as such, are obligated to comply with the provisions of Chapter 119 of the Florida Statutes applicable to this Agreement as the same may be limited or construed by other applicable law. In the event that either the City or Triumph 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 receiving party shall provide written notice to the other party and to ESG of such request as soon as practicable after that party's receipt of such request. If either the City, Triumph, or ESG submits records to the receiving party that are confidential and exempt from public disclosure as trade secrets pursuant to Section 288.075 (3) of the Florida Statutes or proprietary confidential business information pursuant to Section 288.075(4) of the Florida Statutes, such records should be marked accordingly by the submitting party prior to submittal to the other party. In the event that a claim of exemption asserted in response to the submitting party's assertion of confidentiality is challenged in a court of law, the submitting party shall defend, assume and be responsible for all fees, costs and expenses in connection with such challenge. It is expressly understood and agreed that all Back-up Data (as defined in Section 8.3 below) and performance metrics under Section 8.4 below shall be deemed "public records" under Section 119.011 of the Florida Statutes.

7.4 Public Access to the Project. The City and ESG shall 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. The foregoing obligation shall be contained in the Lease.

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

8.1 Termination, Suspension, or Expiration of Project. If the City and/or ESG abandons or, before completion, finally discontinues the Project; or fails to complete a substantial portion of the Project; or for any other reason (other than *force majeure*), the commencement, prosecution, or timely completion of the Project by the City and/or ESG is rendered improbable, infeasible, impossible, or illegal, Triumph may, by written notice to the City, (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 8.4 below, the City and ESG shall upon written demand by Triumph repay to Triumph all portions of the Grant theretofore disbursed to and received by the City.

8.2 Breach of Agreement. In the event the City and/or ESG shall (i) have made any false statement or misrepresentation 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 any representation or warranty made in this Agreement, and/or (iii) have breached, violated, or is in any way in default (other than by reason of *force majeure*), after the expiration of any notice and/or cure periods, under any of its material obligations under this Agreement, then in accordance with Section 8.4 below the City and ESG shall upon written demand by Triumph repay to Triumph all portions of the Grant theretofore disbursed to and received by the City

8.3 Performance Metrics. In the event ESG fails to timely achieve the performance metrics set forth in subparagraphs (a) and (b) below, then in accordance with Section 8.4 below this City and ESG shall, upon written demand by Triumph, repay to Triumph all portions of Grant theretofore disbursed to and received by the City.

(a) On the earlier to occur of:

- (1) ESG cuts steel and begins work on assembly of the ship that will be OPC 10, or
- (2) ESG delivers OPC 9 to the USCG,

at least 900 “Net New Jobs” (as defined below) shall have been created at the ESG Nelson Street Facility over and above 500 FTE (as defined below) jobs, 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.

(b) As used herein, a “Net New Job” shall mean a job that was (a) created after November 14, 2017, (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.

Notwithstanding the foregoing, in the event ESG does not win the United States Coast Guard (“USCG”) contract for offshore patrol cutters (“OPC”) 10 – 25, then the City can retain any Grant received to date as long as at least the 900 Net New Jobs described above are maintained at the ESG Nelson Street Facility and Allanton Facility which are devoted to local, state, federal or commercial shipbuilding and the Lease shall remain in full force and effect.

The calculation of the performance metrics shall be made by Rick Harper or another similarly qualified economist or analyst selected by Triumph.

Triumph shall have the discretion to waive, reduce, extend, or defer any clawback amounts due if it determines in its sole and absolute discretion that (i) a breach of a representation and warranty herein or in the Grant Application, or a breach, violation, or default of or under any other provision of the Agreement, was not material in nature, (ii) based on quantitative evidence, the performance metrics were not achieved due to negative economic conditions beyond ESG’s reasonable control, (iii) ESG 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 ESG’s ability to achieve at least one of the performance metrics.

At any time and from time to time, upon written request by Triumph, the City and ESG shall, within thirty (30) days of such request, deliver to Triumph such data, reports, payroll records, financial statements and reporting, and other documents, instruments, State of Florida employment reporting forms, and such other information in its possession or control as Triumph requires in order to determine whether ESG achieved the above performance metrics (collectively, “**Back-up Data**”). The City’s and/or ESG’s refusal or failure to timely provide any requested Back-up Data and other information described above shall be deemed a breach of a material obligation of this Agreement.

8.4 Clawback from City and ESG. Upon the occurrence of any of the events described in Sections 8.1, 8.2, and/or 8.3 above and the expiration of the cure period provided in Section 10.16, then, upon written demand by Triumph, the City and ESG shall within one (1) year of such demand repay to Triumph all amounts of the Grant that were theretofore disbursed to and received by the City, 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. Excluding interest, the total repayment of Grant funds to be repaid as provided above shall not exceed the total amount of the Grant actually disbursed to the City. It is expressly understood and agreed that the City and ESG shall be jointly and severally liable for repayment of the Grant under this Section 8. The City, ESG, and Triumph acknowledge and agree that any amounts set forth in this Section 8.4 to be paid by the City and ESG are intended as a repayment of Grant funds conditionally disbursed to the City and are due and payable to Triumph as a result of the occurrence of any of the events described in Sections 8.1, 8.2, or 8.3 above. Such

amounts are not intended as and shall not be deemed damages or a penalty. Notwithstanding the foregoing, to the extent that for any reason such amounts are deemed damages, the City, ESG and Triumph agree that (i) such amounts shall constitute liquidated damages, (ii) the actual damages suffered by Triumph would be unreasonably difficult to determine, (iii) Triumph would not have a convenient and adequate alternative to the liquidated damages, (iv) the amounts due Triumph bear a reasonable relationship to any anticipated harm and is a genuine pre-estimate suffered by Triumph, and (v) the City and ESG irrevocably waive any right that it may have to raise as a defense that any such liquidated damages are excessive or punitive.

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

9.1 No Lobbying/Gifts. Neither the City nor ESG shall expend any funds provided under this Agreement for the purpose of lobbying the Legislature, the judicial branch, or any state agency, and shall at all times comply with s. 11.062, F.S., and s. 216.347, F.S. Neither the City nor ESG shall, in connection with this or any other agreement, directly or indirectly: (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any Triumph or State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty; or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any Triumph or State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of Triumph or any authorized State official, the City and ESG shall provide any type of information Triumph or such official reasonably deems relevant to the City's and ESG's compliance with the foregoing. Such information may include, but shall not be limited to, the City's and ESG's business or financial records, documents, or files of any type or form that refer to or relate to this Agreement.

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

9.3 Equal Employment Opportunity/Labor Laws/Other Laws. In connection with the carrying out of the Project, neither the City nor ESG shall discriminate against any employee or applicant for employment because of race, age, creed, color, sex or national origin. In addition, in connection with the Project, the City and ESG shall each comply with all other applicable labor and employment laws and regulations, including, but not limited to, wage

and hour and workplace safety laws and regulations, and laws regarding third party contracts, public contracting, procurement, and civil rights.

9.4 Prohibited Interests. Except as otherwise permitted under Section 112.313(12), Florida Statutes, the City 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 City, or any entity of which the officer, director or employee or the officer's, director's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer, director or employee or the officer's, director's or employee's spouse or child, or any combination of them, has a material interest.

- (1) "Material Interest" means direct or indirect ownership of more than 5% of the total assets or capital stock of any business entity.
- (2) The City 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 City by any person who at any time during the immediately preceding two (2) years was an officer, director or employee of the City.
- (3) The provisions of this subsection shall not be applicable to any agreement between the City 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 City and an agency of state government.

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

9.6 Grant Funds. The City and ESG each acknowledge and agree 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 City 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 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 this Agreement for failure to fully fund the Grant.

10. Miscellaneous Provisions:

10.1 Triumph Not Obligated to Third Parties. Triumph shall not be obligated

or liable hereunder to any party other than the City and ESG. Without limiting the generality of the foregoing, no person or entity providing funding to the Project (other than the City), nor any other contractor, subcontractor, or materialman, shall be a third-party beneficiary under this Agreement. Furthermore, it is expressly understood and agreed that any of Triumph's obligations under this Agreement with respect to, involving, or relating to disbursement of the Grant shall be obligations running solely to the City, and ESG shall have no rights or claims to enforce such obligations or be deemed a third-party beneficiary or such obligations, and ESG expressly waives any such rights, claims, and third-party beneficiary status.

10.2 When Rights and Remedies Not Waived. In no event shall the making by Triumph of any payment of Grant funds to the City 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 City or ESG, and the making of such payment by Triumph while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to Triumph with respect to such breach or default.

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

10.4 Indemnities. To the extent provided by Section 768.28, Florida Statutes, the City 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 negligent act or negligent failure to act by the City, its agents, or employees, during the performance of this Agreement, except that neither the City, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any negligent act or negligent failure to act by Triumph or any of its officers, agents, or employees during the performance of this Agreement. Nothing in this Agreement shall be construed as a waiver by the City 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 City in the performance of services required under this Agreement, Triumph will immediately forward the claim to the City. The City 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 City in the defense of the claim or to require that the City defend Triumph in such claim as described in this Section 10.4. Triumph's failure to promptly notify the City of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by the City. Triumph and the City 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.

In addition to the foregoing, 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 this Agreement, the Grant, the Project, the Comprehensive Agreement, the Easement Agreement, and/or the Lease, including, but not limited to, claims, demands, lawsuits and other legal challenges to the awarding of the Grant and/or the validity or enforceability of this Agreement, the Comprehensive Agreement, the Easement Agreement, and/or the Lease.

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

10.6 Non-Assignment. Neither the City nor ESG shall 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 person or entity upon giving prior written notice to the City and ESG. Any attempted assignment of this Agreement or any of the rights hereunder in violation of this provision shall be void *ab initio*.

10.7 Intentionally Omitted.

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

10.9 Preservation of Remedies. 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.

attorneys' fees and costs. The obligations set forth in this Section 10.12 shall not override or mitigate the City's and ESG's indemnification obligations under Section 10.4 above or any other indemnification obligation of the City and/or ESG hereunder.

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

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

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

10.16 Notice and Right to Cure. Notwithstanding any contrary provision in this Agreement, Triumph shall give the City and ESG written notice of any event or occurrence that would permit Triumph to revoke or terminate the Grant or this Agreement or to exercise any other right or remedy hereunder, and the City and ESG shall have the right to cure, remedy or correct such event or occurrence within thirty (30) days after its receipt of such notice; provided that if such event or occurrence cannot reasonably be cured, remedied or corrected within such thirty-day period, the City and ESG shall have a reasonable time, not to exceed ninety (90) days after

receipt of such notice, to cure, remedy or correct such event or occurrence. Notwithstanding the foregoing, the provisions of this Section 10.16 shall not apply with respect to Applications for Disbursement; rather any notice and cure rights with respect to Applications for Disbursement shall be governed solely by Section 4.2.

10.17 Training. 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.

[signature page follows]

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

THE CITY:

CITY OF PANAMA CITY,
a Florida municipal corporation

By: 
Print Name: _____
Title: Mayor

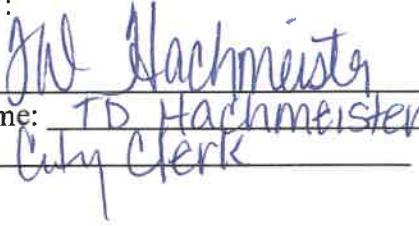
TRIUMPH:

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

By: _____
Print Name: _____
Title: Chairman

By: _____
Print Name: _____
Title: Treasurer

ATTEST:

By: 
Print Name: TD Hachmeister
Title: City Clerk

ATTEST:

By: _____
Print Name: _____
Title: Secretary

ESG:

Eastern Shipbuilding Group, Inc.,
a Florida corporation

By: 
Name: Bryan A. O'Sullivan
Title: D.B.O.

EXHIBIT "A"

BUDGET/TIMELINE

Project Expenses

	Completed Portions of Project	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Project Total
Construction	\$450,000	\$12,550,000	\$3,700,000	\$500,000	\$150,000	\$100,000	\$100,000	\$17,550,000
Reconstruction	\$9,700,000	\$0	\$0	\$0	\$0	\$0	\$0	\$9,700,000
Dredging	\$9,450,000	\$6,000,000	\$2,500,000	\$500,000	\$0	\$0	\$0	\$18,450,000
Design, Engineering and Proposal Development	\$5,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$5,500,000
Land Acquisition	\$13,575,000	\$0	\$0	\$0	\$0	\$0	\$0	\$13,575,000
Equipment	\$5,630,000	\$0	\$0	\$0	\$0	\$0	\$0	\$5,630,000
	\$44,305,000	\$18,550,000	\$6,200,000	\$1,000,000	\$150,000	\$100,000	\$100,000	\$70,405,000

Grant/Match Funds Breakdown

State Legislature (\$15,500,000)

Dredging	\$3,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$3,000,000
Construction	\$450,000	\$0	\$0	\$0	\$0	\$0	\$0	\$450,000
Reconstruction	\$9,700,000	\$0	\$0	\$0	\$0	\$0	\$0	\$9,700,000
Design, Engineering and Proposal Development	\$2,350,000	\$0	\$0	\$0	\$0	\$0	\$0	\$2,350,000
	\$15,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$15,500,000

Bay County (\$450,000)

Dredging	\$450,000	\$0	\$0	\$0	\$0	\$0	\$0	\$450,000
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US Maritime Administration (\$530,000)

Equipment	\$530,000	\$0	\$0	\$0	\$0	\$0	\$0	\$530,000
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ESG/Other Sources (\$33,925,000)

Construction	\$0	\$2,933,142	\$864,751	\$116,858	\$35,057	\$23,372	\$23,372	\$3,996,552
Reconstruction	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Dredging	\$6,000,000	\$1,402,299	\$584,291	\$116,858	\$0	\$0	\$0	\$8,103,448
Design, Engineering and Proposal Development	\$3,150,000	\$0	\$0	\$0	\$0	\$0	\$0	\$3,150,000
Land Acquisition	\$13,575,000	\$0	\$0	\$0	\$0	\$0	\$0	\$13,575,000
Equipment	\$5,100,000	\$0	\$0	\$0	\$0	\$0	\$0	\$5,100,000
	\$27,825,000	\$4,335,441	\$1,449,042	\$233,716	\$35,057	\$23,372	\$23,372	\$33,925,000

Triumph (\$20,000,000)

Dredging	\$0	\$4,597,701	\$1,915,709	\$383,142	\$0	\$0	\$0	\$6,896,552
Construction	\$0	\$9,616,858	\$2,835,249	\$383,142	\$114,943	\$76,628	\$76,628	\$13,103,448
	\$0	\$14,214,559	\$4,750,958	\$766,284	\$114,943	\$76,628	\$76,628	\$20,000,000

EXHIBIT "B"

FORM OF

Application for Disbursement of Grant

Pursuant to Section 4.1 of that certain Grant Award Agreement dated _____, 2019 (the "Agreement"), by and between the City of Panama City, Florida, a political subdivision of the State of Florida ("the City"), Eastern Shipbuilding Group, Inc., a Florida corporation ("ESG"), and Triumph Gulf Coast, Inc., a Florida not-for-profit corporation ("Triumph"), the City hereby requests a disbursement from the Grant (as defined in the Agreement) as follows (all capitalized terms herein shall have the same meanings ascribed to them as set forth in the Agreement):

1. Amount of Grant Disbursement Requested:

\$ _____

2. (a) Amounts of Grant previously disbursed under the Agreement:

\$ _____

(b) Amount of disbursement requested in Item 1 above:

\$ _____

(c) Cumulative amounts disbursed from Grant if this request is approved (add (a) and (b) above):

\$ _____

(d) Remaining amount of Grant to be disbursed

\$20,000,000 minus the amounts in (c) above: \$ _____

3. (a) Cumulative amounts disbursed from Grant if this request is approved (same as (c) above):

\$ _____

(b) Cumulative amounts disbursed for the Project by all funding sources (including Triumph) to date

\$ _____

(c) Cumulative Grant disbursed to date as a percentage of Cumulative amount of all funding sources (including Triumph) disbursed to date

_____%*

* This percentage should not exceed 77%. See Section 4.1 of the Agreement.

4. Attached hereto are (1) true, correct, and complete copies of the invoices supporting the amount requested in Item 1 above, and (2) photographs and/or reports evidencing the completion of the work that is the subject of such invoices. The following additional information is also attached:

5. None of the amount described in Item 1 above for which disbursement 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 City by any contractor, materialman, vendor, or any other person or entity, or (b) paid, reimbursed, returned, refunded, rebated, or otherwise credited to the City by the State of Florida, the United States, or any agency or instrumentality of any of the foregoing, whether under any grant or loan program or other method of contribution.
6. The City hereby certifies, represents, and warrants to Triumph that the following statements are true and correct:
 - (a) This Application for Disbursement does not seek disbursement for more than the amounts actually invoiced under the Construction Contract or any other Contract;
 - (b) This Application for Disbursement seeks disbursement for an amount in excess of the amount permitted by the 72% limitation set forth in Section 4.1 of the Agreement;
 - (c) The amount requested for disbursement under this Application for Disbursement, together with all amounts previously disbursed under the Grant, does not exceed the \$20,000,000 maximum amount of the Grant;
 - (d) Neither the City nor ESG made any misrepresentation or omission of a material nature in the Grant Application, or any supplement or amendment to the Grant Application, or with respect to any document or data furnished with the Grant Application or pursuant to the Agreement;
 - (e) There is no pending litigation against the City and/or ESG (1) which may in Triumph's reasonable discretion jeopardize or adversely affect or delay the Project, and/or (2) which involves or otherwise relates to the Agreement, the awarding of the Grant, the disbursement of the Grant, the Comprehensive Agreement, the Easement Agreement, and/or the Lease;
 - (f) No permit or other governmental approval applicable to the Project has been suspended, revoked, terminated, or has expired, without having been reinstated or renewed, or is in any other manner no longer in force or effect;

- (g) Neither the City nor ESG has taken any action pertaining to the Project which, under the Agreement, requires the approval of Triumph, and the City failed to obtain such approval;
- (h) Neither the City nor ESG has violated any of the provisions of Sections 9.1, 9.4 and/or 9.5 of the Agreement;
- (i) Neither the City nor ESG is in material violation, default, or breach of or under any other provision of the Agreement;
- (j) Neither the City nor ESG is in breach of any representation or warranty contained in this Agreement, and all representations and warranties contained in the Agreement are accurate in all respects as of the date hereof;
- (k) Neither the City, ESG, nor any federal, state, or local agency providing funding for the Project has revoked, suspended, or terminated such funding, including, but not limited to, the Matching Funds, without such funding having been reinstated or renewed or replaced by another funding source;
- (l) The City has or will provide Triumph with evidence of payment of, the Matching Funds toward the costs of the Project.
- (m) Neither the City nor ESG has abandoned or, before completion, discontinued the Project, or for any reason (other than *force majeure* as defined herein) the commencement, prosecution, or timely completion of the Project by the City and/or ESG is rendered improbable, infeasible, impossible, or illegal for any reason other than *force majeure* as defined in the Agreement;
- (n) No portion of the requested disbursement includes disbursement for improvements that are outside the scope of the Project that is contemplated under the Grant Application and/or a Contract;
- (o) No Contract has been materially modified, amended, or terminated without the prior consent or approval of Triumph as required by Section 5.8 of the Agreement;
- (p) Completion of the Project is substantially on schedule for completion pursuant to the Budget as the same may have been modified as provided in the Agreement; and
- (q) The City and ESG maintain in full force and effect all insurance required under Section 5.4 of the Agreement;

(r) The City and ESG are in compliance with all applicable environmental laws and regulations in accordance with Section 5.5 of the Agreement;

(s) The City and ESG are in compliance with the Consultants' Competitive Negotiation Act as required by Section 5.9 of the Agreement; and

(t) The City and ESG are in compliance with the equal employment opportunity and other labor provisions as required by Section 9.3 of the Agreement;

The undersigned, in his/her capacity as _____ of the City, 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 disbursement is consistent with the purposes of the Grant.

Date: _____

Print Name: _____