

## NON-DISCLOSURE AGREEMENT

\_\_\_\_\_ (name), a \_\_\_\_\_ (state and entity type) and the Hancock County Port and Harbor Commission (“Commission”) propose to enter into certain discussions regarding a potential transaction between the parties, which involves leasing of port facilities for \_\_\_\_\_ (purpose of lease) that \_\_\_\_\_ intends to pursue (a “Transaction”). The terms “\_\_\_\_\_ (entity name)” and “Commission” shall include the employees, officers, directors and supervisors of each of those organizations.

The Commission, as a condition to its receipt of Confidential Information (as defined below) agrees with \_\_\_\_\_ (entity name) that (i) all information relating to \_\_\_\_\_ (entity name) and the Transaction furnished by or on behalf of \_\_\_\_\_ (entity name), after the acceptance of this letter and irrespective of the form of communication (such information, together with notes, memoranda, summaries, analyses, compilations and other writings relating thereto or based thereon prepared by the Commission being referred to herein as the “Confidential Information”) will be kept strictly confidential, and (ii) the Confidential Information will be used solely for the purpose of evaluating a Transaction; provided, however, that the Confidential Information may be disclosed to any representative of the Commission who needs to know such information for the purpose of assisting the Commission in evaluating a Transaction (it being understood that such representatives will be instructed to keep such information confidential). The term “Confidential Information” does not include information which (i) is or becomes generally available to the public other than as a result of disclosure by the Commission in violation of this agreement or (ii) becomes available to the Commission or any of its representatives on a non-confidential basis from a source other than \_\_\_\_\_ (entity name) or its representatives, (iii) any information which is independently developed by the Commission or any of its representatives. For purposes hereof, the “Representatives” of any entity means such entity’s affiliates and its and their respective directors, officers, employees, advisors, consultants, potential co-investors and any bank or other person that is considering providing financing to the Commission or its affiliates in connection with a Transaction; provided that notwithstanding anything to the contrary herein, no person or entity shall be deemed a representative unless such person or entity has received Confidential Information hereunder. The Commission agrees to take all reasonable measures to restrain its representatives from prohibited or unauthorized disclosure or use of Confidential Information in breach hereof. Notwithstanding the foregoing, the Commission will not be responsible for those representatives who enter into a separate confidentiality agreement with \_\_\_\_\_ (entity name).

If the Commission or any of its representatives is requested in any judicial or administrative proceeding, or by any governmental or regulatory authority, or compelled by a lawful public records request or similar request, to disclose any Confidential Information, the Commission will, unless prohibited from doing so by law or regulation or by judicial, governmental, or regulatory authority or similar legal process, (i) give

\_\_\_\_\_ (entity name) notice of such request. If, in the absence of a protective order, the Commission or such representative is nonetheless compelled to disclose Confidential Information, \_\_\_\_\_ (entity name) agrees that the Commission or such representative may make such disclosure without liability hereunder, provided that, unless prohibited from doing so by law or regulation or by judicial, governmental, or regulatory authority, the Commission gives \_\_\_\_\_ (entity name) written notice of the information to be disclosed as promptly as is practicable. Notwithstanding anything to the contrary herein, without satisfying the other obligations of this paragraph, the Commission and its representatives may disclose Confidential Information to the extent disclosure is requested or required in connection with routine audits or examinations by, or blanket document requests from, a regulatory, self-regulatory or governmental entity, or is otherwise required by a lawful public records request or similar request.

At any time, upon the written request of \_\_\_\_\_ (entity name), the Commission will promptly destroy or redeliver or cause to be destroyed or redelivered to \_\_\_\_\_ (entity name) all copies of the Confidential Information furnished to the Commission by or on behalf of \_\_\_\_\_ (entity name) and destroy or cause to be destroyed all Confidential Information prepared by \_\_\_\_\_ (entity name) in the possession of the Commission so long as such action complies with any and all federal, state, or local laws or regulations. Notwithstanding the foregoing, the Commission and its representatives may retain (i) one copy of any document requested to be returned or destroyed in a secure location in its internal files, or the files of the Commission's legal department or outside counsel for record or compliance purposes only and (ii) information contained in an archived computer backup system stored as a result of automated back-up procedures for compliance purposes. Notwithstanding the return, destruction or limited retention of any Confidential Information as set forth in this paragraph, the Commission will continue to be bound by its obligations hereunder for the stated term hereof.

It is expressly understood by the parties hereto that this agreement is not intended to, and does not, constitute an agreement to consummate a Transaction or to enter into a definitive Transaction agreement, and neither Party will have any rights or obligations of any kind whatsoever with respect to a Transaction by virtue of this agreement or any other written or oral expression by either party hereto or their respective representatives (other than for the matters specifically agreed to herein) unless and until a definitive agreement relating thereto between the Parties is executed and delivered.

Notwithstanding the foregoing, the Commission's liability to \_\_\_\_\_ (entity name) in connection with this Agreement and any activities undertaken in connection with the evaluation of a Transaction shall exclude liability for special, indirect, punitive or consequential damages in contract, tort, warranty, strict liability or otherwise.

This agreement (i) contains the sole and entire agreement between the Parties with respect to the subject matter hereof, (ii) may be amended, modified or waived only by a

separate written instrument duly executed by or on behalf of each Party hereto, and (iii) shall be governed by and construed in accordance with the laws of the State of Mississippi without giving effect to the conflicts of laws principles thereof. This agreement may be executed in multiple counterparts which when taken together shall be considered as one instrument. Signatures affixed hereto or transmitted electronically shall be considered as original signatures.

The obligations of the Parties hereto shall expire on the first (1<sup>st</sup>) anniversary date hereof.

Each Party understands, and shall ensure that its representatives are aware of, the restrictions on insider trading imposed by applicable federal and state securities laws.

This agreement may not be assigned by operation of law or otherwise, either without the prior written consent of the other Party. Notwithstanding the foregoing, \_\_\_\_\_(entity name) may assign this agreement to \_\_\_\_\_(name of any assignee if applicable), so long as such assignee assumes the obligations of \_\_\_\_\_(entity name) hereunder and \_\_\_\_\_(entity name) provides written notice of such assignment and a copy of such assumption obligation to the Commission.*(Strike the last sentence of this paragraph if the Agreement will not allow for assignment.)*

If the foregoing correctly sets forth our agreement with respect to the matters set forth herein, please so indicate by signing two copies of this agreement and returning one of such signed copies to \_\_\_\_\_(entity name) whereupon this agreement will constitute our binding agreement with respect to the matters set forth herein.

\_\_\_\_\_(entity name)

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

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

**Hancock County Port and Harbor Commission**

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