

## **VENDOR CONFIDENTIALITY AGREEMENT**

This Vendor Confidentiality Agreement (hereafter "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2009 (the "Effective Date"), by and between the Sac & Fox Tribe of the Mississippi in Iowa (hereafter "Tribe"), and \_\_\_\_\_, (hereafter "Vendor"). Each of the Tribe and the Vendor may be referred to herein as a "Party," and together as the "Parties."

WHEREAS the Tribe and Vendor will be having discussions concerning the Tribe's business activities to develop and operate it's wind resource assessment system, [hereafter the "Project"] which discussions will require the Tribe to disclose information to the Vendor that the Tribe deems proprietary and confidential; and

WHEREAS, the Tribe wishes to protect its confidential information against any unauthorized use and any unauthorized or uncontrolled disclosure.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Tribe and the Vendor agree as follows:

1. As used throughout this Agreement, the term "Confidential Information" means information not generally known to third parties, which is proprietary to the Tribe, and/or information about the Project or the Tribe which includes information relating to product discussions about the Project or the Tribe, strategies, financing strategies, organizational strategies, site location strategies, permitting strategies, design/build and other contract discussions and strategies, technical know-how, data, network configurations, other technical materials, trade secret information, financial information, facility specifications and configurations and layout, operational methods, business systems and techniques, business plans, documents, information provided through other media, program materials, flowcharts, notes, outlines and business affairs of the Tribe relating to the Project. All information of the Tribe that is disclosed to the Vendor or to which the Vendor obtains access, whether originated from the Tribe or other disclosing person/entity, shall be presumed to be Confidential Information.

2. It is understood that the unauthorized use or disclosure, whether intentional or unintentional, of any of the Confidential Information would be detrimental to the Tribe. Accordingly, the Vendor agrees that Vendor shall:

- A. Keep such Confidential Information confidential.
- B. Use the Confidential Information only in connection with the discussions and/or bids relevant to the discussions contemplated by this Agreement.
- C. Restrict disclosure of Confidential Information solely to employees, agents and independent contractors of Vendor ["Authorized Parties"] with a need to know and who are subject to obligations of confidentiality substantially similar to those imposed by this Agreement. "Need to know" means the Authorized Party requires access to Confidential Information in order to perform such Authorized Party's responsibilities in connection with the matters contemplated hereby. The Vendor remains responsible for actions and disclosures of all Authorized Parties.
- D. Advise Authorized Parties who gain access to Confidential Information of their obligation with respect to the Confidential Information.

- E. Make only a number of copies of Confidential Information necessary to disseminate the information to Authorized Parties and ensure that confidentiality notices on the Confidential Information are reproduced in full on the copies.
- F. Safeguard the Confidential Information with at least the same degree of care to avoid unauthorized disclosure and use as the Vendor uses to protect its own Confidential Information.
- G. Not disclose to any third party the object and scope of the discussions between the parties, except as required by law or as necessary to enforce the terms hereof.
- H. Not use any of the Confidential Information for any purpose other than for or in connection with the purposes authorized herein.

3. Upon termination of the discussions and bidding process contemplated by this Agreement, or upon the Tribe's request, all records, any compositions, articles, documents and media of any kind and all other items which contain, disclosure and/or embody any Confidential Information [including without limitation, all copies, reproductions, summaries, notes, regardless of the contents thereof] regardless of the person causing the same to be in such form, shall be immediately returned to the Tribe or destroyed by the Vendor, and the Vendor shall thereafter within one week certify in writing to the Tribe that the provisions of this paragraph have been complied with.

4. The obligations set forth above shall not apply to any Confidential Information that: [a] is or becomes available to the public through no breach of this Agreement; [b] was previously known by Vendor without obligation to hold it in confidence; [c] is received from a third party free to disclose such information without restriction; [d] is independently developed by Vendor without use of or reference to Confidential Information of the Tribe; or is ordered to be disclosed by a Court of competent jurisdiction.

5. In the event that the Vendor or its representative receives a request to disclose all or any part of the Confidential Information under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction or by a governmental body, the Vendor shall immediately, and before disclosing any information, notify the Tribe of the existence, terms and circumstances surrounding such a request, so that the Tribe may seek an appropriate protective order and/or waive the Vendor's compliance with the provisions of this Agreement, in the sole discretion of the Tribe.

6. The parties hereto acknowledge that the Confidential Information is the property of the Tribe and the disclosure of the Confidential Information to the Vendor does not convey any right, title or license in the Confidential Information to the Vendor. The Vendor shall not appropriate the Confidential Information to its own use or to the use of any third party and shall only use the Confidential Information for the exclusive benefit of the Tribe except to the extent otherwise authorized in writing by the Tribe.

7. It is understood and agreed that no failure or delay by the Tribe in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

8. The termination of the discussions or relationship between the parties shall not relieve the Vendor or its employees, agents or affiliates of the obligations of non-use or non-disclosure hereunder or the obligation to return or destroy certain materials as set forth in this Agreement.

9. The Vendor's unauthorized use or disclosure of or failure to protect the Confidential Information as required herein shall cause the Tribe certain and irreparable harm and the remedy at law for such breach may be inadequate and damages flowing from such breach(es) are not readily susceptible to being measured in monetary terms. Therefore, the Vendor agrees that the Tribe is entitled to protection from such violations, including immediate protection by injunctive relief, in addition to all other remedies available including without limitation, specific performance.

10. Notwithstanding other provisions of this Agreement, the vendor shall be permitted to retain a copy of its bid documents in the form and format submitted to the Tribe for the Vendor's internal record keeping purposes only, and those bid documents are Confidential Information and are subject to each and every provision of this Agreement except the provision that the bid documents must be destroyed or returned to the Tribe.

11. Except as otherwise provided herein, all documents which are prepared and submitted to the Tribe by the Vendor as contemplated in this Agreement are to be and remain the property of the Tribe and are protected by applicable Tribal laws.

12. There shall be no third-party beneficiaries of this Agreement and this Agreement is not intended to create any third-party beneficiaries. This Agreement is entered into solely for the benefit of the Tribe and Vendor and shall not be deemed to create or evidence any right or remedy of any third party, whether or not designated in this Agreement.

13. The situs of this transaction is on lands within the jurisdiction of the Meskwaki Settlement and the execution and delivery of this Agreement has occurred on Indian lands. This Agreement shall be governed by the laws of the Tribe. The Vendor submits to the jurisdiction of the Sac & Fox Tribe of Mississippi in Iowa Tribal Court and agrees that such Court is the sole forum for the adjudication of any dispute that may arise under this Agreement.

14. Nothing in this Agreement shall be read or construed to effect, modify, limit, or waive the sovereign immunity of the Tribe, its enterprises, corporations, departments, agencies, organizations, officers, agents, and/or employees.

15. The Parties agree in the event of breach of this Agreement the breaching party will pay the other party's costs and reasonable attorney's fees because of the breach whether a lawsuit is filed or not.

16. Neither party may assign or otherwise transfer expressly or by operation of law or otherwise this Agreement in whole or in part, or any rights or obligations hereunder, without the prior written consent of the other party, which consent may be granted or denied in such other party's sole discretion.

17. The name, address, telephone number and contact person for each party is:

**For the Tribe:**

Adrian Pushetonequa, Chairman  
Sac & Fox Tribe of the Mississippi in Iowa  
  
349 Meskwaki Road  
Tama, IA 52339-9629  
Ph: (641)484-4678  
Fax: (641)484-5424

**On behalf of the Tribe with a copy to:**

Maurice R. Johnson, Attorney General  
Sac & Fox Tribe of the Mississippi in Iowa  
349 Meskwaki Road  
Tama, IA 52339-9629  
Ph: (641)484-4678  
Fax: (641)484-5424

**For the Vendor:**

Business name: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Business Address: \_\_\_\_\_  
City, State: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_

The parties are signing this agreement on the date stated in the introductory clause.

Sac & Fox Tribe of  
the Mississippi in Iowa

Vendor \_\_\_\_\_

By: \_\_\_\_\_  
Adrian Pushetonequa  
Chairman

By: \_\_\_\_\_

Its: \_\_\_\_\_