

# ORIGINAL

## FUNDING AGREEMENT BETWEEN THE COUNTY OF EL DORADO AND THE SHINGLE SPRINGS BAND OF MIWOK INDIANS FOR AMBULANCE SERVICES

This Funding Agreement ("Agreement")<sub>2</sub> is entered into on this 6th day of June, 2017 between the County of El Dorado ("County") and the Shingle Springs Band of Miwok Indians, a federally-recognized Indian tribe ("Tribe") (the County and the Tribe are collectively referenced herein as "Parties"). The Parties agree this Agreement will be effective July 1, 2017, and upon execution by both Parties.

### RECITALS

1. The Shingle Springs Band of Miwok Indians is a federally- recognized Indian tribe, and is the beneficiary of trust land that is owned by the United States entitled the Shingle Springs Rancheria (the "Rancheria"). This trust land is located within the geographical boundaries of El Dorado County.
2. The Tribe, as a federally recognized Indian Tribe, may engage in commercial development of its tribal lands and in particular types of gaming on its Rancheria. The Tribe operates a gaming facility and other businesses on the Rancheria pursuant to the Indian Gaming Regulatory Act ("IGRA").
3. Pursuant to the Tribal-State Compact between the State of California and the Tribe, and before the Tribe opened its gaming operation to the public in 2008, the Parties entered into a Memorandum of Understanding and Intergovernmental Agreement (the "IGA"), effective September 28, 2006, and amended October 20, 2012. It is the intent and understanding of the Parties that this Agreement is an independent and separate agreement from the IGA, and that the IGA remains in full force and effect.
4. The Tribe and County entered into two ambulance agreements that were in effect from August 26, 2008 through June 30, 2013 and September 9, 2014 to the present(the "Prior Ambulance Agreements"). The County provides prehospital Advanced Life Support emergency medical services under a public utility model to the residents of the County of El Dorado pursuant to the State of California Health and Safety Code and specifically within County Service Area No.7, where the Rancheria is located, and the areas surrounding the Rancheria.
5. The fire districts operating in County Service Area No. 7 previously formed a joint powers authority (entitled El Dorado County Regional Prehospital Emergency Services Operations Authority ("JPA"), and pursuant to the Contract for Prehospital Advanced Life Support and Dispatch Services with the County, dated July 1, 2006 and as thereafter amended ("JPA Contract")), provides the Tribe on behalf of the County prehospital Advanced Life Support emergency medical services within County Service Area No. 7.

6. The Tribe desires to establish its own agency for the provision of EMS (or alternatively secure EMS through an appropriate entity), but in the exercise of its sovereign authority, and pursuant to its government-to-government relationship with the County, desires to enter a further contract for EMS with the County during this transitional period.
7. The Tribe desires the County to continue to provide prehospital Advanced Life Support emergency medical services on tribal land and the Tribe desires to continue to contract with the County at this time and for the term of this Agreement on a per call basis.
8. The Tribe employs or contracts with emergency medical technicians (EMTs) and/or paramedics and such EMTs and/or paramedics are the first responders to any incidents at Red Hawk Casino, and triage any person(s) in need of medical assistance at Red Hawk Casino and its associated facilities.
9. The Tribe and County are willing to enter into this Agreement, subject to and in consideration of the foregoing Recitals and the terms and conditions set forth below.

NOW THEREFORE, the Parties agree as follows:

A. **Service Terms.** The County will provide the Tribe pre-hospital Advanced Life Support emergency medical services in response to 911 calls for incidents occurring anywhere on the Shingle Springs Rancheria, as defined in Section C, below. The County will provide these services pursuant to the State of California Health and Safety Code. The County agrees to be responsive to any concerns on the part of the Tribe regarding the quality or level of service provided, or treatment of, individuals requiring ambulance service on the Rancheria, and the County will use its best efforts, in coordination with its service contractor, to effectively and expeditiously address them. For its part, the Tribe agrees that it will promptly report to the County EMS Administrator any concerns that it has with regard to quality or level of service or treatment of individuals requiring EMS and that it will use its best efforts, in coordination with the County and its service contractor, to effectively and expeditiously address them.

B. **Payment Terms.** Effective July 1, 2017, and upon execution of this Agreement, the Tribe shall pay the County for emergency medical services as follows:

1. Funding for Advanced Life Support Medic Unit (Ambulance) Response. For the term of the Agreement, the Tribe shall pay the County \$2,000 per Advanced Life Support ("ALS") Medic Unit Response to the Shingle Springs Rancheria, also known as the Rancheria or the Tribe's Reservation, excluding responses made to any residences on the Rancheria. ALS Medic Unit Response shall mean the dispatch of an ambulance to the Shingle Springs Rancheria, as described below, as a result of a request or call through the 911 system. This does not include air ambulance responses. For purposes of this Agreement only, Shingle Springs Rancheria (also known as the Tribe's Reservation) shall mean all of the following: 1) the Tribe's land owned by the United States for the benefit of the Shingle Springs Band of Miwok Indians; 2) the Red Hawk Casino interchange/overpass/on-ramp and off-ramp/acceleration and deceleration lanes

that connect the access road to U.S. Highway 50 (Project ID No. 38339, Route No. 315 in the Indian Reservations Roads system). The Parties' obligations under this Agreement will include land that is taken into trust, and that becomes part of the Tribe's Reservation, during the term of this Agreement, but only once that land is actually taken into trust. Calls initiated from fee land that the Tribe owns is not otherwise subject to this Agreement.

- a) The Tribe shall pay the County a yearly base contract amount of \$200,000 on or before each succeeding twelve month calendar period (measured from September 9th through September 8th in each such calendar period) (Base Contract Year) which amount(s) shall cover the Tribe's yearly funding obligation for the first 100 ALS Medic Unit Responses to the Rancheria per Base Contract Year.
- b) The Tribe shall pay the County on a per medic unit basis (\$2000/ALS Medic Unit Response) for all ALS Medic Unit Responses to the Rancheria that exceed the 100 ALS Medic Unit Response base contract amount in a given Base Contract Year. Tribe and County acknowledge and agree that Tribe paid the yearly base contract amount of \$200,000 for the twelve month calendar period 2016-2017 (measured from September 9, 2016 through September 8, 2017) and that Tribe shall pay the County on a per medic unit basis (\$2,000/ALS Medic Unit Response) for all ALS Medic Unit Responses to the Rancheria that exceed the 100 ALS Medic Unit Response base amount from the effective date of this Agreement through September 8, 2017.) Thereafter, the Tribe shall pay the base contract amount and make payments as set forth in Section B, Payment Terms.
- c) If 100 ALS Medic Unit Responses are provided to the Rancheria in a Base Contract Year, the County shall invoice the Tribe and the Tribe shall pay, on a monthly basis, for all ALS Medic Unit Responses to the Rancheria that occur after the 100 ALS Medic Unit Response threshold is met and prior to the due date of the next payment of the yearly base contract amount or, if in the last year of the Agreement, until the Agreement terminates. The Tribe shall make such monthly payments within 30 days of receipt of the monthly invoice.
- d) If 100 ALS Medic Unit Responses are not provided to the Tribe by the County in a Base Contract Year, the Tribe shall be credited for the unused ALS Medic Unit Responses at the rate of \$2,000 per ALS Medic Unit Response. The yearly base contract amount shall be paid as set forth in subsection a), above; however, if the Tribe is entitled to a credit in a given year, the yearly base contract payment to the County for that year will be reduced by the amount of the credit. Any credit remaining at the termination of the Agreement

shall be refunded to the Tribe in a check issued by the County within 30 days of the Agreement's termination.

1.1 In consideration for services provided to residences on the Rancheria, the Tribe shall pay County \$5,000 annually (at the same time that the Tribe makes the yearly base contract amount payment). This amount shall be in addition to any revenues collected by County through direct billing for ambulance services. County will continue to bill individual patients for ambulance transports in accordance with the billing structure approved by the Board of Supervisors for Service Area 7.

2. Multi-Casualty Incident: For purposes of this Agreement, a multi-casualty incident ("MCI") means an incident that exceeds, or may exceed, the day to day capabilities of the County's EMS system thereby necessitating a request for additional County resources (activation of standby ambulances, additional personnel, etc.) and/or resources from a secondary or tertiary aid responder (or other request for mutual aid) and/or the initiation of the Incident Command System and/or may precipitate or precipitates the declaration of a local disaster.

- a) If an MCI occurs on the Rancheria, including at Red Hawk Casino and the Red Hawk Interchange / Overpass, the Tribe will pay for the dispatched ambulances on the per medic unit basis, as set forth above, of \$2000/ALS Medic Unit Response.
- b) If an MCI occurs on Highway 50 which is, in whole or in part, caused by and/or the fault of a Red Hawk Casino-owned vehicle or bus, or a vehicle or bus chartered by Red Hawk Casino, including but not limited to tour buses and multi-person transport vehicles, the Tribe will pay for the dispatched ambulances on the per medic unit basis, as set forth above, of \$2000/ALS Medic Unit Response.
- c) In addition to the above payments, with respect to an MCI covered under subsections (a) and (b) above, the Tribe will also reimburse the County for any unreimbursed, out-of-pocket costs incurred by the County for any covered MCI (as set forth above) that occurs during the contract period relevant to this Agreement, but only to the extent reimbursement is not available through other means, and/or others are not directly responsible for payment and able to compensate the County for costs attributable to the MCI.
- d) Subject to the foregoing and as allowed by state and federal law, the County agrees that as a condition to any payment as set forth in subsection (c) above, the County must provide the Tribe all documentation relevant to the County's out-of-pocket costs, as well as all documentation relevant to the County's request for and receipt of any funding or reimbursement associated with an MCI for which the County also seeks funding or contribution from the Tribe.

3. **Cost Escalator.** There is no cost escalation for this Agreement except as otherwise agreed to by the Parties under Section G, Reopener/Extension, herein. Any extension of this Agreement may include a cost escalation for the term of the extension.

4. **Revenue Recovery.** This Agreement does not affect the other funding sources utilized by the County for the support of emergency medical services. The Parties recognize that, in addition to the payments made by the Tribe pursuant to this Agreement, the County is separately entitled to bill patients for the ambulance service provided them, and the County is entitled to retain those collections without any credit, offset or reimbursement to the Tribe.

5. **Survival.** All payment obligations under this Agreement shall survive termination and/or expiration of this Agreement and shall remain in full force and effect.

C. **Solely a Funding Mechanism.** This Agreement is a funding mechanism solely for contribution toward prehospital Advanced Life Support emergency medical services. Nothing in the Agreement involves any commitment to any specific project which may result in a potentially significant physical impact on the environment.

D. **Term.** This Agreement shall be deemed effective July 1, 2017 (Effective Date) and shall expire on June 30, 2022 unless otherwise extended by agreement of the Parties, or terminated pursuant to Section F below. The Agreement may be renewed for any time period as agreed to by the Parties.

F. **Transition of EMS Under Future Agreement.** Notwithstanding the foregoing, the County understands the Tribe, as a sovereign nation, intends to establish its own agency to provide EMS on the Rancheria, or to otherwise transfer the provision of EMS on the Rancheria to an "appropriate entity" that the Tribe finds to be in its best interest. Accordingly, to ensure the smooth transition of EMS from the County to the Tribe or Tribe's contracting entity, the Parties agree as follows: The County and Tribe shall negotiate and will enter into a written agreement within one (1) year of the effective date of this Agreement to incorporate the tribal EMS provider or contractor within the County's Local Emergency Medical Services Agency (LEMSA) provided that: 1) any such agreement does not conflict with the County's Public Utility Model; and 2) the private or Tribal EMS provider meets all of the requirements and qualifications of the County relating to EMS.

G. **Reopener/Extension.** Under the Prior Ambulance Agreement the Tribe's funding obligation was based upon the estimated impacts on the prehospital Advanced Life Support emergency medical services system of the County by the Tribe's gaming operation, estimated by the Parties to be equivalent to the acquisition and staffing costs for one-half of an ambulance, after consideration of estimated transport charges and other funding mechanisms within the County's system. The Tribe's funding obligation under this Agreement represents a new method for determining such impact based on historic use (average of 200 calls per year). In recognition that this is an estimate that is contingent upon the actual number of calls which may fluctuate from year to year, the Parties agree

that no earlier than twelve (12) months after execution of this Agreement and no later than sixty (60) days prior to the expiration of this Agreement, either Party may request to discuss, and the other Party will meet and consider in good faith, renegotiation of the Tribe's funding obligations under the Agreement either for the remaining term of the Agreement or for extension of the original term. Neither Party is legally bound to accept a renegotiated funding obligation or extend the term of the Agreement except under a written amendment or extension executed by both Parties.

H. **Dispute Resolution.** The Parties agree to meet and confer in good faith during the term of this Agreement and, upon the request by either party, to reevaluate the needs of the parties. Modification to the Agreement may only be made by mutual written agreement of the parties.

I. **Termination.** This Agreement may not be terminated, except for good cause or as provided under Section F, above, and then only upon 60 days written notice. Good cause is defined as a significant material breach of the Agreement. The failure to make payment of money called for under the terms of this Agreement shall be deemed to be a significant material breach of the Agreement, for which the non-breaching party may, in its discretion, terminate the Agreement. The failure of either Party to honor the terms of this Agreement, may be deemed to be a significant material breach of the Agreement. For claims of breach not significant and material, however, the Parties will negotiate in good faith pursuant to Section H, Dispute Resolution, herein.

J. **Authority.** The undersigned warrant and represent that the signatories to this Agreement are each fully authorized to execute this Agreement on behalf of and bind the County and its officers, directors, and employees, and the Tribe, its Tribal Council, and Tribal members respectively, and will affix its respective authorizing resolutions to this Agreement.

K. **General Provisions.**

1. **No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the Parties hereto, and no other person or entity is intended to or shall have any rights or benefits hereunder, whether as a third party beneficiary or otherwise.

2. **Modification.** No provision of this Agreement shall be amended, modified or waived other than by an instrument in writing signed by an authorized representative of the Tribe and the County.

3. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties herein, and supersedes any prior or contemporaneous discussions, representations or agreements, whether written or oral regarding the provision of prehospital Advanced Life Support emergency medical services.

4. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, and to the extent applicable, governed by federal law.

5. Severability. In the event any provision(s) of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if the invalid, illegal or unenforceable provision(s) had never been contained herein. In the event any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable because such provision is excessively broad as to duration, geographical scope, activity or subject, then such provision shall be construed as being limited to the duration, geographical scope, activity or subject that the court deems allowable under the applicable law.

6. Limited Waiver of Sovereign Immunity. The Tribe hereby agrees to waive its sovereign immunity (and any requirement of exhaustion of tribal remedies) in connection with any dispute vis-a-vis the County that may arise under this Agreement, and consents to the jurisdiction and venue of a Superior Court of California (excluding El Dorado County Superior Court), and all relevant courts of appeal for purposes of enforcing the terms of the Agreement and for judicial resolution of disputes with the County over the Agreement. To the extent the Tribe has waived its immunity, such waiver inures exclusively and solely to the benefit of the County, and no third party possesses the right to seek to enforce this Agreement. Moreover, to the extent not expressly waived herein, the Tribe's sovereign immunity shall remain intact.

7. Notices. Any notices required or permitted hereunder shall be in writing and may be personally delivered, or delivered via the U.S. Postal Service, first class postage prepaid, or by a reputable overnight delivery service (such as U.S. Express Mail, Priority Mail, Federal Express, UPS, or DHL), addressed as follows or to such other place as each party may designate by subsequent written notice to each other:

For the Tribe:  
Chairperson  
Shingle Springs Band of Miwok Indians  
5168 Honpie Road  
Placerville, CA 95667

For the County:  
Chair of the Board of Supervisors  
County of El Dorado  
330 Fair Lane  
Placerville, CA 95667

8. Rule of Construction. Except where preempted by federal law, which governs tribal sovereign immunity and its effective waiver, no provision of this Agreement shall be interpreted or construed against any party herein because such party or its counsel was the sole or principal drafter of it. When the context requires, the plural shall include the singular, and the singular the plural.

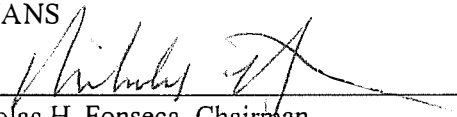
9. Counterparts. This Agreement may be executed in any number of counterparts, and is effective vis-a-vis each party on the date of its execution by each party. Additional parties may be added by mutual consent of the Parties herein.

10. Contract Administrator. The County officer or employee with responsibility for administering this Agreement is the Director of Health and Human Services.

11. Conflict of Interest. The Parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. The Tribe attests that it has no current business or financial relationship with any County official(s), officer(s) or employee(s) that would constitute a conflict of interest and will not enter into any such business or financial relationship with any such official(s), officer(s) or employee(s) during the term of this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement it is deemed to be a significant material breach of the Agreement entitling either party to terminate this Agreement by giving written notice as detailed in the Section titled, "Termination."

Dated: June 30, 2017

SHINGLE SPRINGS BAND OF MIWOK  
INDIANS

By:   
Nicholas H. Fonseca, Chairman

Dated: June \_\_, 2017

COUNTY OF EL DORADO

By: \_\_\_\_\_  
Chair of the Board of Supervisors

Attest: \_\_\_\_\_  
Clerk of the Board of Supervisors