

**Shingle Springs Tribal Gaming Authority
doing business as
Red Hawk Casino**

**Level 2 Electric Vehicle Charging Stations
FUNDING AGREEMENT #160-F1511**

THIS AGREEMENT, made and entered into by and between the County of El Dorado Air Quality Management District, a county air quality management district formed pursuant to California Health and Safety Code section 40100, et seq. (hereinafter referred to as "AQMD"), and Shingle Springs Tribal Gaming Authority doing business as Red Hawk Casino, (hereinafter referred to as "Grantee");

WITNESSETH:

WHEREAS, the California Clean Air Act requires local air pollution control districts to reduce emissions from motor vehicles; and

WHEREAS, the State of California has provided grant funds to acquire electric vehicle charging stations; and

WHEREAS, Grantee has proposed a Project that meets the eligibility criteria of AQMD and that has been approved by AQMD for funding; and

WHEREAS, it is the intent of the parties hereto that such services are in conformity with all applicable federal, state and local laws; and

WHEREAS, Grantee represents that it is willing and able to perform the activities set forth herein;

NOW, THEREFORE, AQMD and Grantee mutually agree as follows:

ARTICLE I

Project: Grantee shall perform all activities and work necessary to complete the Level 2 Electric Vehicle Charging Stations project (hereinafter referred to as "Project"); as set forth in ARTICLE II, Scope of Work. Grantee agrees to furnish all labor, materials, equipment, licenses, permits, fees, and other incidentals necessary to perform and complete, in a professional manner, the services described herein.

Grantee represents that Grantee has the expertise necessary to adequately perform the Project specified in ARTICLE II, Scope of Work.

ARTICLE II

Scope of Work: Grantee shall commence performance of work and produce all work products in accordance with this Article unless this Agreement is terminated sooner as provided for in ARTICLE XIV, Termination. Grantee shall:

- Purchase ten (10) Clipper Creek LCS-25 Level 2 Electric Vehicle (EV) charging stations.
- Install the charging stations in the Red Hawk Casino parking structure.
- Provide electricity to the charging stations.
- Make the chargers available for public use during casino operation hours.
- Maintain according to manufacturer's recommendations, including repairs if any, and make the chargers available for public use for a minimum of 5 years.
- If Grantee discontinues providing public use of the electric vehicle charging stations or removes them prior to 5 years after installation, return the chargers to AQMD and reimburse AQMD the pro rata share of the grant funding based on the minimum 5 year requirement.
- Allow, at the option of AQMD, the placement of AQMD logo or statement on the project facilities or equipment. The placement design, style and color will be determined mutually by the parties.
- Advertise the availability of the charging stations on the Red Hawk Casino website and acknowledge that grant funding was provided by AQMD.
- Report annually charger usage data to AQMD, if charger usage data becomes available.

Title to, and risk of loss, of any electric vehicle charging station or any electric vehicle charging station installation supplies funded by this Agreement shall at all times vest in and with the Grantee. Grantee acknowledges that AQMD did not supply, design, or manufacture any electric vehicle charging station or any installation supplies funded by this Agreement. The electric vehicle charging station and installation supplies are commercially manufactured and sold by a manufacturer.

In the event of any conflict between or among the terms and conditions of this Agreement, the conflict shall be resolved by giving precedence in the following order of priority:

1. The text of this Agreement;
2. Exhibit A, Level 2 Electric Vehicle Charging Stations Budget Itemization.

ARTICLE III

Term: This Agreement shall become effective on October 1, 2014 and shall expire on September 30, 2015 unless terminated earlier in accordance with ARTICLE XIV, Termination.

ARTICLE IV

Compensation: AQMD will pay Grantee for work completed in accordance with this Agreement the total sum of \$6,850.00 as set forth in Exhibit A. The total obligation of AQMD under this Agreement shall not exceed \$6,850.00.

ARTICLE V

Payments: Payments will be permitted only at which time an equivalent service has been completed. AQMD will reimburse Grantee quarterly, in arrears, after receipt and verification of submitted invoices. Invoices shall be mailed to AQMD at the following address:

County of El Dorado
Air Quality Management District
330 Fair Lane, Building A
Placerville, CA 95667
Attn: Dave Johnston, Air Pollution Control Officer

Payment shall be made by AQMD upon submission and evaluation of Grantee's invoice of claim. Said invoice of claim shall set forth the work completed pursuant to this Agreement.

Upon receipt of proper documentation and verification that Grantee has satisfactorily completed the work for which compensation is sought, and that the work is in accordance with ARTICLE II, Scope of Work, AQMD will issue payment to Grantee within forty five (45) calendar days of verification.

The amount to be paid to Grantee under this Agreement includes all sales and use taxes incurred pursuant to this Agreement, if any, including any such taxes due on equipment purchased by Grantee. Grantee shall not receive additional compensation for reimbursement of such taxes and shall not decrease work to compensate therefore.

Concurrently with the submission of any claim for payment, Grantee shall certify (through copies of invoices issued, checks, receipts, and the like) that complete payment has been made to any and all subcontractors as provided.

It is understood that all expenses incidental to Grantee's performance of services under this Agreement shall be borne exclusively by Grantee.

In no event shall compensation paid by AQMD to Grantee for the performance of all services and activities under this Agreement exceed the amount set forth ARTICLE IV, Compensation.

Any compensation under this Agreement, which is not expended by Grantee pursuant to the terms and conditions of this Agreement by the Project completion date, shall automatically revert to AQMD. Only expenditures incurred by the Grantee in the direct

performance of this Agreement will be reimbursed by AQMD. Allowable expenditures under this Agreement are specifically established and included in Exhibit A.

All final claims shall be submitted by Grantee within sixty (60) days following the final month of activities for which payment is claimed. No action will be taken by AQMD on claims submitted beyond the 60-day closeout period.

ARTICLE VI

Taxes: Grantee certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Grantee to County of El Dorado or AQMD. Grantee agrees that it shall not default on any obligations to County of El Dorado or AQMD during the term of this Agreement.

ARTICLE VII

Rights to Emission Reductions: Grantee transfers and conveys to AQMD all rights and claim to ownership of the emission reductions achieved through the installation and operation of any electric vehicle charging station or any installation supplies funded by this Agreement. Grantee shall not use or attempt to use the emission reductions achieved by the project as emission reduction credits. Grantee hereby fully and completely relinquishes such rights for the useful life of the project.

ARTICLE VIII

Accident Prevention: Grantee shall exercise all reasonable and necessary precautions for the protection of persons and property. All care shall be employed to ensure that the work proceeds under the highest standards of safety and prudence, and in compliance with all applicable laws and regulations.

ARTICLE IX

Compliance with Applicable Laws: Grantee shall comply with all federal, State, and local laws and ordinances which are or may be applicable to the Project to be undertaken by Grantee including but not limited to California Health and Safety Code sections 44220 et seq, all Air Resources Board and AQMD criteria thereunder, prevailing wage and work day definitions where applicable, Government Code Section 8546.7, contracting license requirements and permits.

ARTICLE X

Non-Allocation of Funds: The terms of this Agreement and the services to be provided thereunder are contingent on the approval of funds by the appropriating government agency. Should sufficient funds not be allocated, the services provided may be modified or this Agreement terminated at any time by giving Grantee thirty (30) days prior written notice.

ARTICLE XI

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE XII

Contractor to AQMD: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from AQMD and its staff. It is further agreed that in all matters pertaining to this Agreement, Grantee shall act as Contractor only to AQMD and shall not act as contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Grantee's responsibilities to AQMD during term hereof.

ARTICLE XIII

Independent Contractor Liability: Grantee is, and shall be at all times, deemed as an independent contractor and shall be wholly responsible for the acts of Grantee's employees, associates, and subcontractors, in connection with the implementation of the Project, and in performance of the work, duties and obligations by Grantee under this Agreement.

Grantee shall be responsible for performing the work under this Agreement in a safe, professional, skillful, and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. AQMD shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Grantee or its employees. AQMD shall retain the right to administer this Agreement so as to verify that Grantee is performing its obligations in accordance with the terms and conditions thereof.

ARTICLE XII, Independent Contractor Liability, shall survive any termination of this Agreement.

ARTICLE XIV

Audits, Inspections and Enforcement: Grantee shall at any time during regular business hours, and as often as AQMD may deem necessary, make available to AQMD for examination all of Grantee's records and data with respect to the matters covered by this Agreement. Grantee shall, and upon request by AQMD, permit AQMD to audit and inspect all of such records and data necessary to ensure Grantee's compliance with the terms of this Agreement. Grantee shall be subject to an audit by AQMD or its authorized representative to determine if the revenues received by Grantee were spent in accordance with the terms and conditions of this Agreement. If, after audit, AQMD makes a determination that funds provided Grantee pursuant to this Agreement were not spent in conformance with this Agreement or any other applicable provisions of law, Grantee agrees to immediately reimburse AQMD all funds determined to have been expended not in conformance with said provisions.

Grantee shall retain all records and data for activities performed under this Agreement for at least three (3) years from the date of final payment under this Agreement or until all state and federal audits are completed for that fiscal year, whichever is later.

Grantee acknowledges that if total compensation under this Agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code §8546.7. In order to facilitate these potential examinations and audits, Grantee shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the contract, all books, records and documentation necessary to demonstrate performance under the Agreement.

The obligations set forth in this ARTICLE XIII, Audits, Inspections and Enforcement, shall survive any termination of this Agreement.

ARTICLE XV

Termination: AQMD may immediately suspend or terminate this Agreement, in whole or in part, where in the determination of AQMD there is:

1. An illegal or improper use of the grant funds;
2. A failure to comply with any term of this Agreement;
3. A substantially incorrect or incomplete report submitted to AQMD; or
4. Improperly performed services.

In no event shall any payment by AQMD constitute a waiver by AQMD of any breach of this Agreement or any default, which may then exist on the part of Grantee. Neither shall such payment impair or prejudice any remedy available to AQMD with respect to the breach or default. AQMD shall have the right to demand of Grantee the repayment to AQMD of any funds disbursed to Grantee under this Agreement which in the judgment of AQMD were not expended in accordance with the terms of this Agreement. Grantee shall promptly refund any such funds upon demand.

In addition to immediate suspension or termination, AQMD may impose any other remedies available at law, in equity, or otherwise specified in this Agreement.

Either party may terminate this Agreement at any time upon giving the other party at least thirty (30) days advance, written notice of intention to terminate. In such case, AQMD shall, subject to ARTICLE IV, Compensation, pay it's pro rata share of the reasonable value of all services satisfactorily rendered and actual, reasonable costs incurred up to the time of the termination. Upon such termination, the entire work product produced by Grantee shall be promptly delivered to AQMD.

ARTICLE XVI

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices shall be in duplicate and addressed as follows:

To AQMD:

County of El Dorado
Air Quality Management District
330 Fair Lane, Building A
Placerville, California 95667

Attn: Dave Johnston, Air Pollution Control Officer

or to such other location as AQMD directs.
Notices to Grantee shall be addressed as follows:

Red Hawk Casino
1 Red Hawk Parkway
Sacramento, California 95667

Attn: Tyrone Huff, CFO

or to such other location as Grantee directs.

ARTICLE XVII

Change of Address: In the event of a change in address for Grantee's principal place of business, Grantee's Agent for Service of Process, or Notices to Grantee, Grantee shall notify AQMD in writing as provided in ARTICLE XV, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgment in writing by AQMD's Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

ARTICLE XVIII

Time is of the Essence: It is understood that for Grantee's performance under this Agreement, time is of the essence. The parties reasonably anticipate that Grantee shall, to the reasonable satisfaction of AQMD, complete all activities outlined in ARTICLE II, Scope of Work.

ARTICLE XIX

Indemnity: Grantee shall defend, indemnify, and hold AQMD, its Board, officers, agents, and employees harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys' fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, AQMD employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with or resulting from public use of the charging stations or the performance by Grantee, its officers, agents, subcontractors or employees of Grantee's duties under this Agreement, unless such claim, loss, damage, injury or death is the result of the sole or active negligence of AQMD. This duty of Grantee to indemnify and save AQMD harmless includes the duties to defend set forth in California Civil Code Section 2778. Except as provided in this Article, in no event

shall AQMD be liable to Grantee or any third party for any direct, indirect, consequential, special, incidental, or punitive damages for the design, manufacture, operation, maintenance, performance, or demonstration of the electric vehicle charging stations under any theory, including but not limited to tort, contract, breach of warranty, or strict liability.

This indemnification obligation shall survive any termination of this Agreement.

ARTICLE XX

Insurance: Grantee shall provide proof of a policy of insurance satisfactory to County of El Dorado's Risk Management Division and documentation evidencing that Grantee maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Grantee as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Grantee in performance of the Agreement.
- D. In the event Grantee is a licensed professional and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. Grantee shall furnish a certificate of insurance satisfactory to County of El Dorado's Risk Management Division as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to County of El Dorado's Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Grantee agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Grantee agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Grantee agrees that no work or services shall be performed prior to the giving of such approval. In the event Grantee fails to keep in effect at all times insurance coverage as herein provided, AQMD may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

- H. The certificate of insurance must include the following provisions stating that:
1. The insurer will not cancel the insured's coverage without prior written notice to County of El Dorado and AQMD; and
 2. The County of El Dorado, AQMD, their officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. Grantee's insurance coverage shall be primary insurance as respects County of El Dorado, AQMD, their officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County of El Dorado, AQMD, their officers, officials, employees, or volunteers shall be in excess of Grantee's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to, and approved, by the County of El Dorado and AQMD. At the option of the County of El Dorado and AQMD, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County of El Dorado, AQMD, their officers, officials, employees, and volunteers; or Grantee shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County of El Dorado, AQMD, their officers, officials, employees, or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, AQMD, their officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Grantee's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- N. In the event Grantee cannot provide an occurrence policy, Grantee shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. The certificate of insurance shall meet such additional standards as may be determined by the County of El Dorado and AQMD, either independently or in consultation with County's Risk Management Division as essential for protection of the County of El Dorado and AQMD.

ARTICLE XXI

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. Grantee attests that it has no current business or financial relationship with any AQMD employee(s) that would constitute a conflict of interest with provision of services under this Agreement and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. AQMD represents that it is unaware of any financial or economic interest of any public officer or employee of Grantee relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in ARTICLE XIV, Termination, herein.

ARTICLE XXII

California Residency (Form 590): Grantee shall submit a Form 590 prior to execution of this Agreement, or seven (7) percent of each payment made to Grantee will be withheld during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

ARTICLE XXIII

County Payee Data Record Form: Grantee shall file a County Payee Data Record Form with County of El Dorado, unless Grantee has on file with County of El Dorado a Department of the Treasury Internal Revenue Service Form W-9.

ARTICLE XXIV

Licenses: Grantee represents that it and any and all subconsultants, if any, employed under this Agreement are duly certified or licensed in good standing by the State of California to perform the services contemplated under this Agreement, and that Grantee and all subconsultants shall maintain said certificates and licenses in good standing throughout the term of this Agreement.

ARTICLE XXV

Business License: County of El Dorado's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of County of El Dorado without possessing a County of El Dorado business license unless exempt under County Ordinance Code Section 5.08.070. Grantee warrants and represents that it shall comply with all of the requirements of County of El Dorado's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

ARTICLE XXVI

Limited Waiver of Sovereignty: The tribe hereby agrees to waive its sovereign immunity, and any requirement of exhaustion of tribal remedies, in connection with any dispute vis-à-vis the County that may arise under this Agreement, and consents to the jurisdiction and venue of Superior Court of California, 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. This Agreement shall be governed by the laws of the State of California.

ARTICLE XXVII

Contract Administrator: The AQMD Officer or employee with responsibility for administration of this Agreement is Dave Johnston, the Air Pollution Control Officer, or successor. The Grantee Officer or employee with responsibility for administration of this Agreement is Tyrone Huff, Chief Financial Officer, or successor.

ARTICLE XXVIII

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

ARTICLE XXIX

Partial Invalidity: If any provision of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXX

Binding on Successors: This Agreement, including all covenants and conditions contained therein, shall be binding upon and inure to the benefit of the parties, including their respective successors-in-interest, assigns, and legal representatives.

ARTICLE XXXI

No Third Party Beneficiaries: Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

ARTICLE XXXII

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

ARTICLE XXXIII

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties, and they incorporate or supersede all prior written or oral agreements or understandings.

Requesting Agreement Administrator Concurrence:

By: 
Dave Johnston
Air Pollution Control Officer

Dated: 12/29/14

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

-- COUNTY OF EL DORADO
AIR QUALITY MANAGEMENT DISTRICT --

By: _____

Dated: _____

Board of Directors
"AQMD"

Attest:
James S. Mitrising
Clerk of the Board

By: _____
Deputy Clerk

Dated: _____

-- SHINGLE SPRINGS TRIBAL GAMING AUTHORITY
dba
RED HAWK CASINO --

By: *Tyrone Huff*
Tyrone Huff
Chief Financial Officer
"Grantee"

Dated: *12/08/2014*

Yolanda Toyaba
Chairperson
"Grantee"

Exhibit A
Level 2 Electric Vehicle Charging Stations
Budget Itemization

Quantity	Description	Unit Cost	Total
10	Clipper Creek LCS-25 Charging Station http://www.clippercreek.com/store/product/charging-station-lcs-25-with-holster/	\$514.00	\$5,140.00
N/A	Material for install Pipe, wire, Misc metal to pre-fab pedestals, breakers etc		\$660.00
52.5	Labor - Red Hawk Maintenance Staff	\$20.00	\$1,050.00
		Total:	\$6,850.00