



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

MAY 12 2009

PORTLAND AREA  
INDIAN HEALTH SERVICE  
1220 SW 3rd AVENUE, Room 476  
PORTLAND, OREGON 97204

Dear Tribal Leader:

Enclosed please find the addendum/contract for use with Self-Determination Contracts and Self-Governance Compacts for funds authorized and distributed under the American Recovery and Reinvestment Act (ARRA). The document will be used as an addendum to current contracts and funding agreements. The Indian Health Service (IHS) and the Office of Management and Budget (OMB) intend that this document be used as is, without changes. This document is not subject to negotiation. To access ARRA funds, it must be accepted in its totality and must be signed by each Tribe or Tribal organization entering into the agreement.

The primary purpose of the ARRA is to stimulate the economy by quickly providing funding to Federal agencies and to Tribal, state, and local governments to use for projects that will create jobs. This document is the result of many meetings in a very short time within the IHS and between the IHS, the Department of the Interior, and OMB, and required numerous compromises by all parties. The provisions incorporated into the addendum reflect the requirements imposed on funding recipients by the ARRA and are intended to notify Tribes of the responsibilities associated with accepting ARRA funds.

If you have questions related to Title V Self-Governance compacts or funding agreements or Title I contracts or annual funding agreements please contact Randall Morgan ([randall.morgan@ihs.gov](mailto:randall.morgan@ihs.gov) or (503) 326-2009), or Denise Imholt ([denise.imholt@ihs.gov](mailto:denise.imholt@ihs.gov) or (503) 326-5716).

Sincerely,

Roselyn Tso  
Acting Area Director

Enclosure

**Addendum to Tribal contracting agreements to transfer funds pursuant to the  
American Recovery and Reinvestment Act of 2009**

The American Recovery and Reinvestment Act of 2009 (ARRA), P.L. 111-5, requires the Secretary to identify all projects to be conducted under the authority of Public Law 93-638 and other relevant Tribal contracting authorities. Pursuant to Section 1610(b) of ARRA, in each funding agreement that transfers ARRA funds to Tribes pursuant to self-determination contracting authorities, the Secretary “shall incorporate provisions to ensure that the agreement conforms with the provisions of this Act regarding the timing for use of funds and transparency, oversight, reporting, and accountability, including review by the Inspectors General, the Accountability and Transparency Board, and Government Accountability Office, consistent with the objectives of this Act.”

Pursuant to this Addendum, and in accordance with ARRA and the schedule and conditions of this contract, including any associated documents, the Awarding Agency will provide ARRA funds to Recipient for the purpose of (describe project or activity):

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as follows (include amount and schedule):

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Notwithstanding anything in the Tribe’s other agreements with the Awarding Agency, including any Contract/Compact and Annual Funding Agreement/Funding Agreement, the following terms and conditions shall apply to the use of any ARRA funds. By signing this Addendum, both parties agree:

1. Definitions.

- A. “Recipient,” “Contractor,” or “Tribe” means [insert name of Tribe/Tribal Organization], a federally-recognized Indian Tribe or Tribal Organization, as defined at 25 U.S.C. 450b.
- B. “Awarding Agency” means [Name of Department and Agency].
- C. “The Secretary” means the Secretary of [insert name of Department].
- D. “ARRA” means the American Recovery and Reinvestment Act of 2009.
- E. “ARRA funds” means all funds provided under this addendum/contract, pursuant to ARRA.
- F. “Contracting Officer” has the meaning given that term for the purposes of the Contract Disputes Act of 1978, 41 U.S.C. 601 et seq. This includes the Title I Contracting Officer, the Director of the Indian Health Service, or his/her designee for Title I and Title V.
- G. “Awarding Official” means the Department of the Interior official responsible for the agreement.

2. Preference for quick-start activities.

ARRA funds are provided for a specific project or activity that must be started and completed expeditiously. For projects, the Tribe and the Awarding Agency have negotiated a Project Agreement, including a Scope of Work or similar document that identifies the project, the total amount of funds to be provided, the start date for the project, the schedule for when the Tribe will expend funds, and the schedule for completion.

3. Availability of funding.

The parties agree that the Awarding Agency's authority to obligate funds related to this contract expires on September 30, 2010 and that any contractual conditions placed on receipt of payments under this addendum/contract must be met to ensure obligation by that date at the latest or earlier as agreed to in this contract/addendum or in the associated contractual documents. Delay or failure to meet conditions placed on receipt of funds (e.g., completion of specific stage of construction) may place the project or activity at risk of losing ARRA funds. The ARRA funds provided for in this agreement are one-time only, non-recurring funds. By providing ARRA funds, the Awarding Agency is not obligated to provide funding for this project or activity from future appropriations.

4. Unavailability of contract support cost funding.

ARRA funds in the Funding Agreement (FA)/Annual Funding Agreement (AFA) are part of a non-recurring, one-time appropriation, and the Tribe acknowledges that:

- A. No contract support cost (CSC) funding is associated with ARRA funds, and nothing in the AFA/FA or the associated contract/compact creates a promise on the part of the Awarding Agency to pay the Tribe CSC funding in connection with the ARRA funds.
- B. The Tribe still wishes to contract for ARRA funds and can conduct ARRA-funded project or activity, despite the absence of CSC funding.

5. Separate accounting for ARRA funds.

ARRA funds must be accounted for separately from all other funds. The parties agree that this requirement applies even if ARRA funds are awarded to complete an ongoing project.

6. No reallocation of funds.

ARRA funds must be expended for the specific purpose outlined in this Agreement. The Tribe understands it is not authorized to rebudget, redesign, reallocate, or reprogram ARRA funds without written authorization from the Awarding Agency.

7. No imprudent projects or activities

In compliance with the Presidential Memorandum of March 20, 2009 on “Ensuring Responsible Spending of Recovery Act Funds,” 74 F.R. 12531 (March 25, 2009), the Awarding Agency will exercise its discretion to ensure, and the parties agree, that no ARRA funds will be used for imprudent projects or activities that do not meet the objectives of ARRA, including any casino or other gaming establishment, aquarium, zoo, golf course, or swimming pool.

8. Use of American iron, steel, and manufactured goods.

Absent a written waiver by the Secretary, none of the ARRA funds made available pursuant to this addendum/contract may be used for a project for the construction, alteration, maintenance or repair of a public building or public work unless all the iron, steel, and manufactured goods used in the project are produced in the United States.

9. Review by Awarding Agency, Inspector General, Recovery Accountability and Transparency Board, and Comptroller General of the United States.

The Awarding Agency, the Recovery Accountability and Transparency Board, the Inspector General of the Awarding Agency, and the Comptroller General of the United States may review, audit, and oversee funds awarded pursuant to this contract. Findings and audits may be posted to the website of the Inspector General of the Awarding Agency and linked to Recovery.gov. The Recovery Accountability and Transparency Board may issue and enforce subpoenas, hold public hearings and conduct necessary inquiries, and submit reports to the President and Congress concerning contract awards. The Comptroller General is authorized to examine records and interview officers and employees of the Contractor concerning this contract.

The parties agree to comply with all applicable provisions of ARRA, including all transparency, oversight, reporting and accountability, and subpoena provisions of ARRA. Among other things, these provisions mandate review and audit by the Awarding Agency, the Office of the Inspector General of the Awarding Agency, the Recovery Accountability and Transparency Board, and the Government Accountability Office, consistent with the objectives of the ARRA, the Inspector General Act of 1978, as amended, and other applicable Federal law, regulation, or guidance.

10. Prohibition of reprisals against contractor whistleblowers.

No employee of the Contractor or any subcontractor shall be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of the employee's duties, to the Recovery Accountability and Transparency Board, the Inspector General, the Comptroller General, a member of Congress, a state or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, a Federal agency head, or their representatives, information that the employee reasonably believes is evidence of (1) gross mismanagement of this addendum/contract; (2) a gross waste of funds awarded pursuant to this addendum/contract; (3) a substantial and specific danger to public health or safety related to the implementation or use of funds awarded pursuant to this addendum/contract; (4) an abuse of authority related to the implementation or use of funds awarded pursuant to this addendum/contract; or (5) a violation of law, rule, or regulation related to this addendum/contract (including the competition for or negotiation of the addendum/contract). This prohibition is enforceable pursuant to processes set up by ARRA. Other provisions of section 1553 of ARRA also apply.

11. Reporting requirements.

Pursuant to section 1512(c) of ARRA, the Contractor shall provide a report on a Quarterly Basis, not later than 10 days after the end of each calendar quarter, which contains the following information:

- A. the total amount of ARRA funds received from the Awarding Agency;
- B. the amount of ARRA funds received that were expended or obligated to projects or activities; and
- C. a detailed list of all projects or activities for which ARRA funds were expended or obligated, including:
  - a. the name of the project or activity;
  - b. a description of the project or activity;
  - c. an evaluation of the completion status of the project or activity; and
  - d. an estimate of the number of jobs created and the number of jobs retained by the project or activity.
- D. Detailed information on any subcontracts awarded by the Tribe to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (P. L. 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director, Office of Management and Budget; and

The information referenced in this section will be posted by the Contractor online at <http://FederalReporting.gov>. The Contractor shall use the reporting instructions and data elements that will be provided on this website and ensure that any information that is pre-filled is corrected or updated as needed. The information referenced in this section may also be posted by the Awarding Agency to Recovery.gov.

12. Additional reporting requirements.

At the request of the Contracting Officer or Awarding Official, the Tribe shall provide to the Contracting Officer or Awarding Official information that is required to be posted to Recovery.gov pursuant to section 1526 of ARRA. Tribes that have contracted to assume all Federal responsibilities under the National Environmental Policy Act (NEPA) shall also provide information that the President is required to report to Congress pursuant to section 1609(c) of ARRA.

The information referenced in this section will be posted by the Awarding Agency to Recovery.gov pursuant to section 1526 of ARRA or reported to the Senate Environmental and Public Works Committee and the House Natural Resources Committee pursuant to section 1609(c) of ARRA.

13. Registration with Central Contractor Registration (CCR) database.

The Contractor shall register with the CCR database ([www.ccr.gov](http://www.ccr.gov)) and complete other registration requirements as determined by the Director, Office of Management and Budget.

14. Oversight and dispute resolution.

The Awarding Agency may, at its discretion, conduct monitoring visits to ensure compliance with the terms and conditions of ARRA and this addendum/contract, including the Project Agreement and Scope of Work or any other associated contract documents. The Contracting Officer or Awarding Official will provide the Tribe with written notice of any deficiency and the Tribe will have an opportunity to correct the deficiency within a specified timeframe in the notice.

If the Tribe fails to comply with the terms and conditions of ARRA and this addendum/contract, including the Project Agreement and the Scope of Work, the Contracting Officer or Awarding Official may issue a written decision demanding the return of ARRA funds to the Agency, in accordance with the Contract Disputes Act (CDA), 41 U.S.C. 605(a). The Tribe shall not make any expenditure of ARRA funds after the date of the Contracting Officer's or Awarding Official's decision. Within 30 days of the Contracting Officer's or Awarding Official's decision, the Tribe shall either return ARRA funds to the Agency, or if the Tribe disagrees with the Contracting Officer's or Awarding Official's findings, file an appeal pursuant to the CDA. If the Tribe files its appeal with the Civilian Board of Contract Appeals (CBCA), the parties shall request an expedited review process, consistent with Rule 51(a) of the Rules of Procedure of the CBCA. If the Tribe files its appeal with the Court of Federal Claims (COFC), the parties agree to cross move for judgment on the administrative record, consistent with Rule 52.1 of the Rules of the COFC.

15. Provisions of ARRA control.

With regard to ARRA funds, in the event of a conflict between ARRA and any other provisions of law including the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 450 *et seq.*, the provisions of ARRA and its objectives control.

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

FOR AWARDDING AGENCY

FOR TRIBE