ECS File No. JPA 94-183
Project: FY 95 Section 18 Transit

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE NAVAJO NATION

THIS AGREEMENT is entered into 23 MARCH, 1995, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and THE NAVAJO NATION, acting by and through its TRIBAL COUNCIL (the "Tribe").

I. RECITALS

1. The Section 18 Program, authorized by Section 313 of the Surface Transportation Assistance Act of 1978, which amended the Urban Mass Transportation Act of 1964, offers Federal assistance for public transportation in rural and small urban areas by way of a formula grant program to be administered by each state.

2. The State desires to participate in the Section 18 Program. The Governor of Arizona has designated the Arizona Department of Transportation to receive and administer Federal funds under this program.

3. The Tribe has expressed a desire to obtain financial assistance for providing rural public transportation services by filing an application for such assistance, and said application has been approved by State and the Federal Government. The conditions and assurances of said application are included herein by reference.

4. The State, under the authority granted by Arizona Revised Statutes Section 28-108, and the Tribe, under the authority granted by 2 Navajo Tribal Code Section 223, wish to enter into and execute a contract for the purpose of implementing a Section 18 Project for Federal reimbursement by the State as grant administrator.

5. By entering into this agreement, the Tribe does not waive its soveriegn immunity.

NOW THEREFORE, in consideration of the foregoing recitals and certifications and of the covenants and agreements by the parties made to be kept and performed, the parties agree as follows:

II. SCOPE OF PROJECT

1. The Tribe shall undertake and complete the activities as proposed in the approved application for Section 18 funds. Such activities, hereinafter called Project, shall be accomplished as described in the Project Description, Attachment A hereto, and by this reference made a part hereof.

a. The cost of the Project is estimated to be $397,694.00 as indicated in Attachment B, Project Budget, and by this reference made a part hereof. The federal share of Project costs is limited to $143,670.00. The State of Arizona assumes no financial obligation or liability hereunder.

b. The method of payment shall be reimbursement of eligible costs incurred, up to the limits described herein. In accordance with the payment and reporting schedules prescribed by this Agreement, the Tribe shall submit reports and Project billings to State for reimbursement of non-operating and operating expenses. Approved capital expenses may be billed for reimbursement as incurred. Claims for payment will be processed by State upon receipt and approval of appropriate reports, documentation and invoices. All reimbursements are conditioned upon receipt by State of federal funds designated for said purpose(s). In no event shall the total amount reimbursed by State exceed the federal share approved for the Project. The parties expressly recognize that all payments are to be made by State solely from federal funds made available to State for said purpose.

c. Billings for reimbursement of eligible expenses and reports of contract activities shall be submitted monthly on forms provided by State. They shall be signed by the Project Manager. Each billing report period shall be the last day of the report period.

d. Each request for reimbursement must be accompanied by a reimbursement description which will include information to verify the reimbursement request amount. Items to be included will be date of check, check number, vendor paid, description/purpose, check amount and code which will relate to the budget line item. Example C1 would be the Capital budget, item 1, A4 would be the Administration budget, item 4, 06 would be Operating budget, item 6, etc. Reimbursement will not be processed unless all information is provided in correct form. Overruns in line items shall not be reimbursed unless prior approval has been obtained from the State.

e. All items of $300 or more, excluding payroll, must be accompanied by an invoice before reimbursement can be processed.

f. Each activity report shall include, but not be limited to, data regarding ridership, mileage, operating hours, fare recovery ratio, cost per passenger trip, cost per mile, non capital cost per service hour, passengers per service hour, passengers per mile. State may impose a penalty of a 5% reduction of total federal reimbursement per billing period for all billings or reports submitted more than 45 calendar days after the end of the billing period. The penalty may be deducted by State from the reimbursement for the last billing. An exception will be made for the final billing, which may be submitted up to 60 calendar days after the end of the final billing period, before becoming subject to the late penalty.

g. Eligible costs are those costs attributable to the Project and allowable under the approved Project budget and the provisions of:

1) Office of Management and Budget (OMB) Circular A-87, "Cost Principles Applicable to Grants and Contracts with State and Local Government."

2) OMB Circular A-102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments."

3) OMB Circular A-102, Attachment O, "Standards Governing State and Local Grantee Procurement."

4) OMB Circular A-128, "Audit Requirements."

h. No costs incurred by the Tribe prior to October 1, 1994 or subsequent to the termination date will be eligible for reimburse ment as Project costs, unless prior written approval from State is granted. All costs charged to the Project shall be supported by properly executed payrolls, time records, invoices, vouchers, warrants, and any other support evidencing that those costs were specifically incurred in the performance of the Project. All documentation of Project costs shall be clearly identified and readily accessible. Within 60 calendar days after completion of the Project period, the Tribe must submit a final invoice, narrative and financial operating statement showing the total expenses and revenue of the Project. Anti-Drug compliance costs shall not be incurred by Projects until authorized by State in writing.

i. The Federal share payable for Project Budget expenses shall be subject to the following limits:

1) For capital expenses, shall not exceed 80% of the net cost.

2) For administrative expenses, shall not exceed 50% of the net cost.

3) For operating expenses, shall not exceed 50% of the net operating costs or deficit.

4) For anti-drug compliance costs, shall not exceed 80% of the net cost.

5) For training costs, shall not exceed 100% of the net cost.

j. At least half of the Tribe's share for all expenses must be provided in cash from sources other than Federal funds or from approved in-kind expenses. The remaining half of the Tribe'S share may be made up of unrestricted funds from other Federal programs as described in Attachment B, Project Budget.

k. All donation and advertising revenues received in excess of the budgeted local match shall be used to reduce the federal share of the Project budget.

1. Lien on Project Equipment - To the extent of financial assistance provided, State shall hold a first lien on all capital equipment acquired under this Agreement in the amount of the federal share of the equipment cost. State shall also hold a first lien on any computer hardware, software or office equipment provided to the Tribe and paid for by State.

2. Use and Disposal of Project Equipment

a. Tribe shall observe the property management standards as set forth in OMB Circular A-102, Attachment N. The Tribe further agrees that the Project equipment shall be used for the provision of transportation service within the described service area and in the manner described in Attachment A, Project Description. If, at any time, the contract with State for the described service is terminated or Project equipment is not used in this manner, or is withdrawn from transportation service whether by planned withdrawal or casualty loss, the Tribe shall notify State within 72 hours of such event, and shall remit to State a proportional amount of the fair market value, if any, of the property, which shall be deter mined on the basis of the ratio of federal financial assistance to the actual cost of the equipment. Fair market value shall be deemed to be the value of the property as determined by competent appraisal at the time of such misuse or withdrawal from use, and as approved by State. In the event of loss due to theft, casualty or fire, the damages paid by the insurance carrier or payable from a self-insured reserve account shall be considered fair market value. In no event is salvage value to be considered fair market value. Upon State's receipt and approval of said payment, State's lien shall be released.

b. Records

1) The Tribe shall keep satisfactory records with regard to the use of equipment purchased under this contract and shall submit to State upon request such information as is required in order to assure compliance with this clause. The Tribe shall submit to State during the period of required use of Project equipment, a certification that the equipment is still being used in accordance with the terms of this Agreement.

2) Project vehicles may also be used for non-Project purposes. Therefore, the Tribe agrees to keep accurate vehicle mileage logs to distinguish between Project and non-Project mileage. State will reimburse vehicle related operating expenses in proportion not to exceed the number of actual driven Project miles as a percentage of the total miles.

c. The Project equipment shall at all times be operated in a safe, prudent, lawful manner and within the capaTribe limitations established by the manufacturer. The Tribe shall maintain the Project equipment in safe and mechanically sound condition and shall keep accurate records of such maintenance. The State shall have the right to conduct periodic inspections of Tribe'S records and the Project equipment to verify compliance with this requirement.

d. The Tribe agrees to conduct a persistent and visible promotional program in order to insure that all facets of the service are known by and available to the general public, and in order to increase ridership on all trips. Acceptable promotional devices and strategies include, but are not limited to: distribution of fliers and handbills; posting of signs and posters in public gathering places; radio and television announce ments; press releases and articles in local, church, and organization newspapers, bulletins and newsletters; and printed route maps and schedules. The Tribe shall provide State with copies or samples of promotional materials used. The Tribe shall submit to State on an annual basis, a plan describing marketing activities including, but not limited to, the following:

1) Expenditures of marketing activities including a breakout of line item expenditures

2) Examples of Pre-Test-Post-Test studies used to measure marketing activity effectiveness

3) Research focused on new markets (routes), and service development

4) Summary of marketing activities aimed at the local business community (promoting employee use of, support for, and business involvement in planning)

5) Summary of advertising and promotion campaigns (both present and planned)

6) Summary of local public relations activities (present and planned) to generate public support for and use of transit. Examples of press (media) coverage, involvement in community activities, etc.

e. As part of the annual marketing plan, the Tribe is required to conduct formal and/or informal market analysis to determine what improvements can be made to the Project to better serve the general public. Possible analysis techniques include on-board rider surveys, and surveys of the general public via mail and telephone, and questionnaires in the local newspaper and other techniques as set forth in the Tribe's marketing plan.

f. The Tribe shall display, in a manner acceptable to State, a decal or similar sign on the exterior of the Project vehicles indicating that this device is open to the general public.

g. Changes to fares, routes, schedules, and the schedule of activities in Attachment A, Project Description, may be made with prior written approval from State without requiring a written amendment to this Agreement.

h. Changes to budget line items may be made in accordance with the following rules:

1) Changes in and between operating and administration budget line items that are not in excess of 5% of the total Project cost, may be made with State's prior written approval.

2) Administrative funds may be rebudgeted for operating expenses with State's prior written approval. Operating funds shall not be reprogrammed for administrative expenses.

3) No capital line items shall be reprogrammed for operating or administrative expenses.

4) The capital contingency line item shall be used only for cost overruns of capital line items named in the Project budget.

5) No anti-drug compliance cost line items shall be reprogrammed for other expenses.

6) No training funds shall be reprogrammed for other expenses.

i. All other changes mutually agreed upon shall be incorporated by written amendments to this Agreement.

j. The Tribe **shall furnish certificates to State** showing motor vehicle liability insurance in force for the use of Project equipment for the following minimum amounts:

1) Collision and Comprehensive Insurance - (as applicable).

2) Personal Injury, Medical, and Uninsured Motorist - $300,000.

3) Public Liability and Property Damage - $1,000,000.

Insurance Certificates **shall name the State as additional insured.** If the State holds liens on any Project equipment, insurance certificates shall also name State as loss payee. Insurance policies shall be occurrence form unless otherwise approved in writing by State. Such certificates are to be delivered to State concurrently with execution of this contract.

3. Procurement Requirements

a. The Tribe shall make purchases of any equipment, materials or services for the Project in compliance with the following:

1) Federal Management Circular A-87.

2) OMB Circular A-102, Attachment O.

3) UMTA Circular 7010.1, Capital Cost of Contracting.

4) Title 49, Code of Federal Regulations, Part 660, "Buy America Requirements."

5) Title 49, CFR Part 23, "Participation by Minority Business Enterprise in Department of Transportation Programs", as amended.

6) UMTA Circular 4716.1, the UMTA Disadvantaged Business Enterprise Women Business Enterprise requirements for Recipients and Transit Vehicle Manufacturers.

7) State "DBE" Program Plan.

8) UMTA Order 4220.1A, "Third-Party Contracting Guidelines," dated 6-8-82.

9) State "Section 18 Required Purchasing Procedures."

b. The Tribe shall submit its bid specifications to State for approval prior to release of the specifications to possible bidders. State shall concur in the bid award prior to any agreement or contract being executed for the purchase of services or capital equipment for the Project exceeding $5,000.

III. MISCELLANEOUS PROVISIONS

1. Retention of Records, Audit, and Reimbursement for Audit Exceptions.

a. The Tribe, and any subcontractor, shall retain all books, accounts, reports, files and other records relating to this contract for a period of five years from completion of the contract. Such records shall be subject to audit and inspection at any reasonable time during the term of the contract or within five years after completion thereof, as provided by ARS Section 35-214. Tribe, upon request of the State, shall produce designated contract records at any reasonable time at the State's Office of Audit and Analysis in Phoenix, Arizona.

b. The final audit of this Project will be conducted pursuant to OMB Circular A-128, the "Guidelines for Financial and Compliance Audits of Federally Assisted Programs," and generally accepted auditing standards established by the American Institute of Certified Public Accountants. The Tribe also agrees to provide State with a copy of the final audit report concerning any portion of the contract period, as soon as it is released.

c. The Tribe agrees to reimburse State for any expenditure under this Agreement for which it received payment or reimbursement, as applicable, which is disallowed by an audit exception by State, the State or federal government.

d. If federal or state audit exceptions are made relating to this contract, the Tribe shall reimburse all costs incurred by the State of Arizona and State associated with defending against the audit exceptions or performing an audit or follow-up audit including but not limited to: audit fees, court costs, attorney fees based upon a reasonable hourly amount for the Assistant Attorney General based upon reasonable charges in the community, travel costs, penalty assessments, and all other costs of whatever nature.

e. Immediately upon notification from State, the Tribe shall reimburse the amount of the audit exception and any related costs directly to the appropriate Federal agency or State as specified by State in the notification. The Tribe shall indemnify the State and hold them, their officers, agents, and employees harmless against any and all liability or damages in regard to audit exceptions.

2. If, during the course of this Agreement, situations arise which prevent its completion within the time allotted, an extension of the contract time may be granted upon execution of a written amendment to that effect.

3. This contract may be terminated by either party upon thirty (30) days written notice. If this contract is so terminated, Tribe will be compensated for work performed up to the effective date of termination.

4. Failure to perform any and all of the terms and conditions of this contract, including the schedule of work, shall be deemed a substantial breach thereof. The State shall give the Tribe written notice thereof. After receipt of such notice, the Tribe shall have five working days in which to respond. In the event the Tribe does not cure such failure to the satisfaction of State, the State may terminate this Contract without further consideration by so notifying the Tribe in writing. In the event of cancellation of this Contract, Tribe shall not be entitled to damages and agrees not to sue State for damages therefor. After notice of cancellation, Tribe agrees to perform the terms and conditions of this contract up to and including the date of cancellation, as though no cancellation had been made.

5. All parties are hereby put on notice that this Contract is subject to cancellation pursuant to Arizona Revised Statutes Section 38-511.

6. Subcontracts

a. The Tribe shall not assign any portion of the work to be performed under this Agreement, or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement without the prior written concurrence of State.

b. Should subcontractors be authorized by State, the subcontractors will be subject to all provisions of this Agreement. It will be the Tribe's responsibility to duly inform the subcontractors by means of a contract or other legally binding document stipulating the subcontractors responsibility to comply with this Agreement.

7. The Tribe hereby agrees to indemnify, defend and save harmless the State, any of its departments, divisions, agencies, officers or employees from all sums which the State, any of its departments, divisions, agencies, officers or employees may be obligated to pay by reason of any liability imposed upon any of the above for damages arising out of the performance of the Project or this Agreement, or caused by any error, negligence, omission or act of the Tribe or any person employed by him, or others for whose acts the Tribe is legally liable. In the event of any legal action, the above sums shall include, but not be limited to court costs, expenses of litigation and reasonable attorney's fees.

8. It is not the intent of this Agreement to place the State in the role of guarantor for protections in instances where a legally and financially responsible Tribe defaults on its obligations. The State enters into this Agreement to absolve itself of financial liability for the terms and conditions of the Section 13(c) Special Warranty, included herein by reference, assigning liability to the Tribe through this Agreement between the State and Tribe. The Tribe agrees to assume said liability and agrees that the terms and conditions of the Section 13(c) Special Warranty shall apply for the protection of the transportation related employees of any employer providing transportation services assisted by the Project, and transportation related employees of any other surface public transportation providers in the transportation service area of the Project. An appeal under Section 13(c) shall not void or suspend the terms of this Agreement.

9. No member of the Arizona Legislature nor any member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom. The provisions of this clause shall be extended to all public employees, officers, or tribal council members.

10. The Tribe shall comply with all federal, state and local laws, ordinances, rules and regulations applicable to the performance of this contract and the work hereunder.

11. The Tribe shall comply with all applicable requirements of the following regulations relative to nondiscrimination:

a. Title VI of the 1964 Civil Rights Act.

b. Executive Order 83-5 issued by Governor Babbitt.

c. 49 CFR Part 23, "Participation by Minority Business Enterprises in Department of Transportation Programs."

d. 49 CFR Part 23, 45 CFR 45281 (7/3/80), "Guidance for Implementing DOT Rules Creating a Minority Business Enterprises Program in DOT Financial Assistance Programs."

e. 9 CFR Part 23, 48 CFR 141 (7/21/83), "Participation by Minority Business Enterprises in Department of Transportation Programs."

f. 49 CFR 27, Parts 37 and 38 Transportation for Individuals with Disabilities; Final Rule.

g. 49 CFR 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Labor Regulations (41 CFR Part 60).

12. The Tribe agrees to comply with State's "Program Plan for Participation of Disadvantaged Business Enterprises" (also referred to as the "DBE Program"). The Tribe shall submit quarterly DBE reports, in a format prescribed by State, within thirty (30) calendar days after the end of each calendar quarter.

13. Other Regulations

a. The Tribe shall address the needs of the elderly and handicapped persons, pursuant to Section 504 of the Rehabilitation Act of 1973 (20 USC 794).

b. The Tribe shall comply, as applicable, with the labor protection provisions of Section 13(c) of the Urban Mass Transportation Act of 1964, as amended.

c. The Tribe shall comply, as applicable, with the Guidelines relative to charter bus and school bus operations.

d. The Tribe shall comply with such anti-drug regulations as may be enacted by state or federal agencies.

14. All tribal, federal and state regulations, laws and documents referenced in this Agreement are to be considered contractually as though written herein.

15. In the event of litigation between the Tribe and State, litigation shall be commenced and prosecuted in the appropriate court of competent jurisdiction within the State of Arizona.

16. Applicable laws and regulations of the State and the Tribe shall govern the rights of the parties with respect to the performance of this agreement. The parties hereto shall select a process for the resolution of claims or disputes relating to this agreement, compliant with applicalbe laws and regulations of the State and the Tribe, and acceptable to the State and the Tribe.

17. The Tribe and the State recognize that in actual economic practice overcharges resulting from antitrust violations are in fact borne by the purchaser or ultimate user; in this case, the State. Therefore, Tribe hereby assigns to State any and all claims for such overcharges.

18. All notices or demands upon either party hereto by the other pursuant to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Section 18 Manager
206 South 17th Avenue, Mail Drop 340B
Phoenix, Arizona 85007

The Navajo Nation
Transit Administrator
PO Box 9000
Window Rock, Arizona 86515

19. This agreement shall become effective upon execution and shall end on September 30, 1995, unless earlier terminated as provided herein.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

THE NAVAJO NATION

By _____
ALBERT HALE
President

STATE OF ARIZONA
Department of Transportation

By _____
HARRY A. REED, Director
Transportation Planning Division

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ATTACHMENT B

NAVAJO TRANSIT
ADMINISTRATIVE BUDGET
FY 94/95

DESCRIPTION	COST
Director (1101)	$ 14,231
Secretary (1103)	6,840
Admin. Assistant (1105)	8,317
Account Clerk (1107)	7,181
Admin. Services Officer (1123)	12,283
Salary Adjustments	1,710
Total Fringe (1300)	14,091
Personal Travel (2200)	1,050
Office Supplies (3100)	420
Photocopy (3350)	126
Postage (3150)	210
Dues & Subscriptions (3250)	504
Equipment Rental (4100	973
Telephone Expense (4400)	2,520
Seminar\Registration fees (6610)	840
Indirect Cost	5,842
Administration Subtotal	$ 77,138
Local Share (50%)	$39,213
Federal Share (50%)	$37,925

Local Share Source:

Navajo Nation Funds	$39,213

ATTACHMENT B

NAVAJO TRANSIT
OPERATING BUDGET
FY 94/95

DESCRIPTION	COST
Driver/Mechanics	$ 98,049
Mechanics	35,721
Overtime (1210)	11,997
Salary Adjustment	4,712
Total Fringe (1300)	41,938
Fuel and Oil	48,670
Tires, Parts and Maintenance	33,170
Freight	434
Advertisement	2,480
Vehicle Insurance	6,200
Uniforms (3325)	1,240
Travel Expenses	1,860
Vehicle Use (rental)	5,591
Printing	6,200
Supplies	3,100
Equipment Rental	775
Indirect Cost	15,956
Total Operating Costs	$ 318,093
Farebox Revenues	$ 81,577
Net Operating Costs	$ 236,518
Local Share (50%)	$ 132,941
Federal Share (50%)	$ 103,575

Local Share Source:

Navajo Nation Funds $ 132,941

ATTACHMENT B

NAVAJO TRANSIT
BUDGET SUMMARY

FY 93-94

	Capital	Oper.	Admin.	Anti-Drug Compliance	Train.	Total
Fare Revenues	xxxxx	81,577	xxxxx	xxxxx	xxxx	$81,577
Local Share	xxxxx	132,941	39,213	293	xxxx	$172,447
Federal Share	xxxxx	103,575	37,925	1,170	1,000	$143,670
Total	xxxxx	318,093	77,138	1,463	1,000	$397,694

PERFORMANCE STANDARDS

Farebox Recovery Ratio:	25%
Cost per Mile:	$1.56
Cost per Service Hour:	$45.81
Cost per Passenger Trip:	$7.84

JPA 94-183

RESOLUTION

BE IT RESOLVED on this 12th day of October 1994, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Transportation Planning Division, to enter into an agreement with the Navajo Nation for the purpose of defining responsibilities for the FY95 Section 18 program.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted for approval and execution by the Director, Transportation Planning Division.

for LARRY S. BONINE
Director

JPA 93-183

APPROVAL OF

THE NAVAJO NATION ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, and the NAVAJO NATION and declare this agreement to be in proper form and within the powers and authority granted to the Tribe under the laws of the Tribe.

DATED this 7th day of March, 1995.

Marcelino R. Gomez

Tribal Attorney