

FTA FISCAL YEAR 2010 AGREEMENTS
COMPARED WITH
FTA FISCAL YEAR 2009 AGREEMENTS

Grant Agreement, Supplemental Agreement, and Cooperative Agreement

The following changes have been made:

- (1) New document numbers and dates have been added as follows:
 - (a) Grant Agreement, FTA G-16, October 1, 2009,
 - (b) Supplemental Agreement, Attachment to FTA G-16, October 1, 2009, and
 - (c) Cooperative Agreement, FTA C-16, October 1, 2009.

- (2) The website address for the new Master Agreement has been established at <http://www.fta.dot.gov/documents/16-Master.pdf>, and referenced in the Grant Agreement and the Cooperative Agreement.

Master Agreement

Below are the important changes to the new Master Agreement. Minor editorial changes and minor changes in wording have not been identified:

- (1) Cover Page. The document number and date for the new Master Agreement is FTA MA(16), October 1, 2009, and the FTA website is established at <http://www.fta.dot.gov/documents/16-Master.pdf>.

- (2) Subsection 1.d. The definition of “Cooperative Agreement” is revised to clarify that, except to the extent FTA determines otherwise in writing, the latest Master Agreement will apply to the project as explained in the preface to this Master Agreement as follows:

This Master Agreement does not have an Expiration Date. The provisions of this Master Agreement will continue to apply to the Project unless or until modified or superseded by Federal laws, regulations, or directives effective at a later date, or Grant Agreements, Cooperative Agreements, or Master Agreements issued at a later date.

- (3) Subsection 1.j. The definition of “Grant Agreement” is revised to clarify that, except to the extent FTA determines otherwise in writing, the latest Master Agreement will apply to the project as explained in the preface to this Master Agreement as follows:

This Master Agreement does not have an Expiration Date. The provisions of this Master Agreement will continue to apply to the Project unless or until modified or superseded by Federal laws, regulations, or directives effective at a later date, or Grant Agreements, Cooperative Agreements, or Master Agreements issued at a later date.

- (4) Section 6. A specific reference to the most recent FTA Guidance is added to the provisions pertaining to for re-allocations of budget amounts.

FTA FISCAL YEAR 2010 AGREEMENTS
COMPARED WITH
FTA FISCAL YEAR 2009 AGREEMENTS

- (5) Subsection 9.e(1)(e). A new provision is added to emphasize that any profit or fee that the Recipient may claim for its services under the Grant Agreement or Cooperative Agreement will be disallowed. Consequently, former subsection 9.e(1)(e) has been re-designated subsection 9.e(1)(f).
- (6) New Subsection 9.f. A new subsection has been added asserting FTA's right under the common grant rules to permit Governmental Recipients to use the program income they earn during the project period to for the purposes and under the conditions of that Grant Agreement or Cooperative Agreement; to permit Non-Governmental Recipients to use the program income they earn to further eligible project or program objectives; and permit the costs associated with earning program income to be subtracted from the gross amount of program income earned provided those costs have not been charged to the Project.
- (7) Subsection 10.a. In accordance with Office of Management and Budget (OMB) direction, a reference to the new Federal Financial Report (SF-425), now required as of October 2009, is substituted for the previous reference to SF-269A, which is no longer used.
- (8) Subsection 12.e. A reference to U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 49 C.F.R. Part 25, has been added.
- (9) Subsection 12.f(2). Language has been added to clarify that the Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, apply generally, irrespective of Federal assistance for the project.
- (10) Subsection 12.h. A more specific citation to the confidentiality provisions of the Public Health Service Act of 1912, as amended, has been added: 42 U.S.C. §§ 290dd through 290dd-2.
- (11) Subsection 15.f. Executive Order No. 13502, "Use of Project Labor Agreements [FLA] for Federal Construction Projects," February 6, 2009, 41 U.S.C. § 251 note, rescinded Executive Order No. 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," as amended by Executive Order No. 13208, which restricted Recipients' use of project labor agreements for their projects.
- (12) Subsection 15.l(4)(a). The citation to Section 306 of the Clean Air Act has been corrected to read "42 U.S.C. § 7606."

FTA FISCAL YEAR 2010 AGREEMENTS
COMPARED WITH
FTA FISCAL YEAR 2009 AGREEMENTS

(13) New Subsection 17.c. A new subsection has been added to clarify that, for all FTA Recipients, license fees and royalties for patents, patent applications, and inventions produced under the Project are considered program income. However, consistent with the common grant rules, Recipients will have no obligations to the Federal Government with respect to program income earned from those license fees and royalties, except to the extent FTA determines otherwise in writing.

(14) Subsection 18.d. This subsection on Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies Projects has been revised to assure that when FTA provides Federal assistance for a research, development, demonstration, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to Project participants, even if the Recipient provides other information, at a minimum the Recipient will provide a report at the end of the Project that FTA may publish or make available for publication on the Internet, in addition to any report that FTA may request that would contain proprietary information. The Recipient is also directed to identify clearly any specific confidential, privileged, or proprietary information it submits to FTA. Subsection 18.d also clarifies that it does not apply to adaptations of automatic data processing equipment or programs for the Recipient's use when the costs thereof are financed through an FTA capital program.

(15) New Subsection 18.e. A new subsection has been added to clarify that, for all FTA Recipients, license fees and royalties for copyrighted material, or trademarks produced under the Project are considered program income. However, consistent with the common grant rules, Recipients will have no obligations to the Federal Government with respect to program income earned from those license fees and royalties, except to the extent FTA determines otherwise in writing. Consequently, former subsections 18.e through 18.h have been re-designated subsections 18.f through 18.i, respectively.

(16) Subsection 24.a(3). Add a reference to the civil law requirements of the Copeland “Anti-Kickback” Act, which have been codified at 40 U.S.C. § 3145.

(17) Subsection 25.a. In light of DOT’s new environmental regulations, references to the joint FHWA/FTA document, “Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities,” dated September 2, 2005, and to U.S. EPA regulations, “Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act,” 40 C.F.R. Part 51, Subpart T have been removed;

(18) Subsection 32.a. A reference to OMB Guidance, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 2 C.F.R. Part 182, has been added. In addition, amendments to U.S. DOT regulations, “Governmentwide Requirements for

FTA FISCAL YEAR 2010 AGREEMENTS
COMPARED WITH
FTA FISCAL YEAR 2009 AGREEMENTS

Drug-Free Workplace (Financial Assistance),” 49 C.F.R. Part 32 are expected to be promulgated. [*OMB published final guidance in 74 Fed. Reg. 28149 et seq. on June 15, 2009.*]

(19) New Subsection 44.a(2). A new subsection has been added directing the Recipient to identify clearly any specific confidential, privileged, or proprietary information or data contained within any report it submits to FTA. Consequently, former subsection 44.a(2) has been re-designated subsection 44.a(3).

(20) Section 52. This provision has been modified to substitute terms more closely consistent with those used in the Transportation Infrastructure Finance and Innovation Act, as amended (TIFIA), in accordance with: (1) 23 U.S.C. chapter 6.

(21) New Section 53. A new section has been added to include special requirements for the projects financed under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, February 17, 2009 (“Recovery Act”) that were previously inserted as Conditions of Award at the inception of the program, with a new subsection added to emphasize prompt project implementation, and limitations on Federal liability to provide funding. In addition, Recipients are now encouraged to use U.S. DOT emblems for those programs. Consequently, former Sections 53 through 57 have been re-designated Sections 54 through 58.