

Interest on the Bonds is **not** excludable from gross income. See "TAX MATTERS" herein.



**\$1,500,000,000**  
**TEXAS TRANSPORTATION COMMISSION**  
**STATE HIGHWAY FUND FIRST TIER REVENUE BONDS,**  
**TAXABLE SERIES 2010**  
**(BUILD AMERICA BONDS - DIRECT PAYMENT)**

**Dated:** Date of Initial Delivery

**Due:** April 1, as shown on the inside cover

The "Texas Transportation Commission State Highway Fund First Tier Revenue Bonds, Taxable Series 2010 (Build America Bonds - Direct Payment)" (the "Bonds") are special and limited obligations of the Texas Transportation Commission (the "Commission"), the governing body of the Texas Department of Transportation (the "Department"), an agency of the State of Texas (the "State"). The Bonds are being issued pursuant to the authority granted to the Commission by Article III, Section 49-n of the Texas Constitution; Section 222.003, Texas Transportation Code (the "Act"); Chapter 1371, Texas Government Code; and a Second Amended and Restated Master Resolution dated as of April 23, 2010 (the "Master Resolution"); a Fifth Supplemental Resolution (the "Fifth Supplemental Resolution") adopted by minute order of the Commission on February 25, 2010; and an Award Certificate of Departmental Representative executed on July 27, 2010 (the "Award Certificate"). The Master Resolution, the Fifth Supplemental Resolution and the Award Certificate are sometimes jointly referred to herein as the "Resolution." The Master Resolution establishes a financing program (the "Program") to provide funds for any lawful purpose and to provide a financing structure to facilitate the Commission's exercise of the power and authority conferred by the Act through the issuance, execution and delivery of obligations payable from the State Highway Fund (the "Fund"). The Bonds are being issued as "First Tier Senior Obligations" under the Resolution to (i) finance State highway improvement projects that are eligible for funding with revenues dedicated under Article VIII, Section 7-a of the Texas Constitution; and (ii) pay the costs of issuing the Bonds, as more fully described herein.

The Bonds, together with the outstanding First Tier Senior Obligations and any additional First Tier Senior Obligations hereafter issued, will be payable from a first lien on the Pledged Revenues (as hereinafter defined) consisting primarily of certain funds deposited to the credit of the Fund. In the Master Resolution, the Commission has reserved the right to establish additional levels of lien seniority and payment priority (each, a "Tier") for Senior Obligations to be issued in the future. Pursuant to Article III, Section 49-n of the Texas Constitution, revenue on deposit in the Fund is appropriated in an amount necessary to pay the principal of and interest on the Bonds that mature or become due during any fiscal year and any cost related to the Bonds. This appropriation of revenue may not be modified to impair the payment of the Bonds unless provisions have been made for a full discharge of the Bonds. **NEITHER THE STATE, NOR ANY AGENCY, POLITICAL CORPORATION, OR POLITICAL SUBDIVISION OF THE STATE IS OBLIGATED TO PAY THE PRINCIPAL OF OR INTEREST ON THE BONDS, OTHER THAN AS PROVIDED IN THE RESOLUTION. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE, ANY AGENCY, POLITICAL CORPORATION, OR POLITICAL SUBDIVISION OF THE STATE IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE BONDS.**

The Bonds are initially issuable only to Cede & Co., the nominee of The Depository Trust Company, New York, New York ("DTC"), pursuant to the book-entry-only system described herein. Beneficial ownership of the Bonds may be acquired in denominations of \$5,000 or integral multiples thereof within a maturity. No physical delivery of the Bonds will be made to the beneficial owners thereof. Principal of, redemption premium, if any, and interest on the Bonds will be payable by the paying agent/registrant (the "Paying Agent/Registrar"), initially Wells Fargo Bank, N.A., Austin, Texas, to Cede & Co., which will make distribution of the amounts so paid to the participating members of DTC for subsequent remittance to the owners of the beneficial interests in the Bonds. See "APPENDIX E - DESCRIPTION OF BOOK-ENTRY-ONLY SYSTEM AND GLOBAL CLEARANCE PROCEDURES." The Bonds will bear interest from their date of initial delivery, calculated on the basis of a 360-day year composed of twelve 30-day months. Interest on the Bonds will be payable on April 1 and October 1 of each year, commencing April 1, 2011, until maturity or prior redemption.

Individual purchases of the Bonds may be made only in book-entry form through the facilities of DTC or, outside the United States, through Clearstream Banking, société anonyme, Luxembourg ("Clearstream Banking") or the Euroclear Bank S.A./N.V. as operator of the Euroclear System ("Euroclear"). Clearstream Banking and Euroclear may hold omnibus positions on behalf of their participants through customers' securities accounts in Clearstream Banking's and Euroclear's names on the books of their respective depositories, which in turn, will hold positions in customers' securities accounts in such depository's name on the books of DTC. Purchasers will not receive certificates representing their interest in the Bonds purchased.

**The Commission has irrevocably elected to treat the Bonds as "Build America Bonds" for purposes of the American Recovery and Reinvestment Act of 2009 and Section 54AA of the Internal Revenue Code of 1986, as amended (the "Code"), and irrevocably elected pursuant to Section 6431 of the Code to receive a federal subsidy payment (each a "Federal Payment") from the United States Treasury equal to 35% of the interest payable on the Bonds. The Commission intends for the Federal Payments to be available for payment of debt service on the Bonds, but the Federal Payments will not be pledged as security to pay debt service on the Bonds. No holders of Bonds will be entitled to such Federal Payments or to receive a tax credit with respect to the Bonds. See "THE BONDS - Designation of the Bonds as 'Build America Bonds'" herein.**

The Bonds are subject to redemption prior to maturity in whole or in part, from time to time, as more fully described herein. See "THE BONDS - Redemption Provisions."

This cover page contains information for quick reference only. It is not a summary of the Bonds. Potential investors must read the entire Official Statement to obtain information essential to making an informed investment decision. Investment in the Bonds is subject to certain investment considerations. See "INVESTMENT CONSIDERATIONS" herein.

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**SEE INSIDE COVER PAGE FOR MATURITY SCHEDULE**

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The Bonds are offered for delivery when, as, and if issued and accepted by the Underwriters, and subject to the approval of the Attorney General of the State and the approval of certain legal matters by Andrews Kurth LLP, Austin, Texas, Bond Counsel. Certain legal matters will be passed upon for the Commission by General Counsel to the Commission and by Fulbright & Jaworski L.L.P., Dallas, Texas, Disclosure Counsel to the Commission. Certain legal matters will be passed upon for the Underwriters by Locke Lord Bissell & Liddell LLP, Dallas, Texas and Mahomes Bolden & Warren PC, Dallas, Texas, Co-Counsel for the Underwriters. It is expected that the Bonds will be delivered on or about August 5, 2010 through the facilities of DTC.

**Goldman, Sachs & Co.**

**BofA Merrill Lynch**

**Citi**

**Estrada Hinojosa & Company, Inc.**

**Morgan Keegan & Company, Inc.**

**M.R. Beal & Company**

**Piper Jaffray & Co.**

**Southwest Securities**

## MATURITY SCHEDULE

**\$1,500,000,000**

**TEXAS TRANSPORTATION COMMISSION  
STATE HIGHWAY FUND FIRST TIER REVENUE BONDS, TAXABLE SERIES 2010  
(BUILD AMERICA BONDS - DIRECT PAYMENT)**

\$295,955,000 5.028% Term Bonds due April 1, 2026 - Price 100%  
CUSIP<sup>(1)</sup>: 88283LHT6 ISIN<sup>(1)</sup>: US88283LHT61 COMMON CODES<sup>(2)</sup>: 053061745

\$1,204,045,000 5.178% Term Bonds due April 1, 2030 - Price 100%  
CUSIP<sup>(1)</sup>: 88283LHU3 ISIN<sup>(1)</sup>: US88283LHU35 COMMON CODES<sup>(2)</sup>: 053062083

(Interest accrues from the date of delivery of the Bonds)

<sup>(1)</sup> CUSIP is a registered trademark of the American Bankers Association. CUSIP and ISIN data herein are provided by CUSIP Global Services, managed by Standard & Poor's Financial Services LLC on behalf of the American Bankers Association. This data is not intended to create a database and does not serve in any way as a substitute for the CUSIP services. Neither the Commission, the Department, the Financial Advisor, nor the Underwriters shall be responsible for the selection or the correctness of the CUSIP or ISIN numbers shown herein.

<sup>(2)</sup> The Common Codes are provided herein by Euroclear Bank S.A./N.V. Common Codes are provided for convenience of reference only. Neither the Commission, the Department, the Financial Advisor nor the Underwriters take any responsibility for the accuracy of such numbers.

**TEXAS TRANSPORTATION COMMISSION**

Name	Title	Term Expires
Deirdre Delisi	Chair	February 1, 2013
Ted Houghton	Commissioner	February 1, 2015
Ned S. Holmes	Commissioner	February 1, 2011
William Meadows	Commissioner	February 1, 2013
Fred Underwood	Commissioner	February 1, 2015

**TEXAS DEPARTMENT OF TRANSPORTATION**

Name	Position	Total Service with the Department
Amadeo Saenz, Jr., P.E.	Executive Director	32 years
Steven E. Simmons, P.E.	Deputy Executive Director	27 years
David Casteel, P.E.	Assist. Exec. Dir., Field and District Operations	26 years
John A. Barton, P.E.	Assist. Exec. Dir., Engineering Operations	25 years
James M. Bass	Chief Financial Officer	22 years
Brian Ragland, CPA	Finance Director	4 years
John Muñoz, CPA	Deputy Director, Finance Division	22 years
Robert (Bob) W. Jackson	General Counsel	25 years

**CONSULTANTS AND ADVISORS**

Bond Counsel ..... Andrews Kurth LLP, Austin, Texas  
 Disclosure Counsel ..... Fulbright & Jaworski L.L.P., Dallas, Texas  
 Financial Advisor ..... RBC Capital Markets Corporation, Dallas, Texas  
 Paying Agent/Registrar ..... Wells Fargo Bank, N.A., Austin, Texas

For additional information regarding the Commission or the Department, please contact either:

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 Chief Financial Officer  
 Texas Department of Transportation  
 125 E. 11th Street  
 Austin, Texas 78701-2483  
 (512) 305-9507

Mr. Tom Yang  
 RBC Capital Markets Corporation  
 City Place, Suite 2500  
 2711 N. Haskell Avenue  
 Dallas, Texas 75204  
 (214) 989-1660

## SALE AND DISTRIBUTION OF THE BONDS

### Use of Official Statement

No dealer, broker, salesman or other person has been authorized by the Commission or the Underwriters to give any information or to make any representation other than those contained in this Official Statement, and, if given or made, such other information or representation must not be relied upon as having been authorized by the Commission or the Underwriters. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the Bonds by any person, in any jurisdiction in which it is unlawful for such person to make such offer, solicitation, or sale. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement, nor any sale made hereunder, shall, under any circumstances, create the implication that there has been no change in the affairs of the Commission since the date hereof. See “CONTINUING DISCLOSURE OF INFORMATION: for a description of the Commission’s undertaking to provide certain information on a continuing basis. This Official Statement is submitted in connection with the sale of the Bonds and may not be reproduced or used for any other purpose. In no instance may this Official Statement be reproduced or used in part.

Certain information set forth in this Official Statement has been furnished by the Commission, and other sources which are believed to be reliable, but such information is not to be construed as a representation by the Underwriters.

The Underwriters have provided the following sentence for inclusion in this Official Statement. The Underwriters have reviewed the information in this Official Statement in accordance with, and as part of, their respective responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

THIS OFFICIAL STATEMENT IS INTENDED TO REFLECT FACTS AND CIRCUMSTANCES ON THE DATE OF THIS OFFICIAL STATEMENT OR ON SUCH OTHER DATE OR AT SUCH OTHER TIME AS IDENTIFIED HEREIN. NO ASSURANCE CAN BE GIVEN THAT SUCH INFORMATION MAY NOT BE MISLEADING AT A LATER DATE. CONSEQUENTLY, RELIANCE ON THIS OFFICIAL STATEMENT AT TIMES SUBSEQUENT TO THE ISSUANCE OF THE BONDS DESCRIBED HEREIN SHOULD NOT BE MADE ON THE ASSUMPTION THAT ANY SUCH FACTS OR CIRCUMSTANCES ARE UNCHANGED.

Neither the Commission, the Underwriters nor the Financial Advisor make any representation or warranty with respect to the information contained in this Official Statement regarding The Depository Trust Company (“DTC”) or its Book-Entry-Only System, Clearstream Banking, société anonyme, Luxembourg (“Clearstream Banking”) and Euroclear Bank S.A./N.V. (“Euroclear”), as provided for in “APPENDIX E - DESCRIPTION OF BOOK-ENTRY-ONLY SYSTEM AND GLOBAL CLEARANCE PROCEDURES,” as such information was furnished by DTC.

### Marketability

THE PRICE AND OTHER TERMS RESPECTING THE OFFERING AND SALE OF THE BONDS MAY BE CHANGED FROM TIME TO TIME BY THE UNDERWRITERS AFTER SUCH BONDS ARE RELEASED FOR SALE AND SUCH BONDS MAY BE OFFERED AND SOLD AT PRICES OTHER THAN THE INITIAL OFFERING PRICES, INCLUDING SALES TO DEALERS WHO MAY SELL SUCH BONDS INTO INVESTMENT ACCOUNTS. IN CONNECTION WITH THE OFFERING OF THE BONDS, THE UNDERWRITERS MAY OVERALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF SUCH BONDS AT LEVELS ABOVE THOSE WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

### Securities Laws

THE BONDS HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION (THE “SEC”) NOR HAS THE SEC PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFICIAL STATEMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

No registration statement relating to the Bonds has been filed with the SEC under the Securities Act of 1933, in reliance upon an exemption provided thereunder, nor have the Bonds been registered or qualified under the Securities Act of Texas in reliance upon various exemptions contained therein. Furthermore, the Bonds have not been registered or qualified under the securities laws of any other jurisdiction (domestic or foreign).

The Commission assumes no responsibility for registration or qualification for sale or other disposition of the Bonds under the securities laws of any jurisdiction (domestic or foreign) in which the Bonds may be offered, sold or otherwise transferred. This disclaimer of responsibility for registration or qualification for sale or other disposition of the Bonds shall not be construed as an interpretation of any kind with regard to the availability of any exemption from securities registration or qualification provisions.

The statements contained in this Official Statement, and in other information provided by the Commission, that are not purely historical, are forward-looking statements, including statements regarding the Commission’s expectations, hopes, intentions or strategies regarding the future. All forward-looking statements included in this Official Statement are based on information available to the Commission on the date hereof, and the Commission assumes no obligation to update any such forward-looking statements. See “INVESTMENT CONSIDERATIONS - Forward-Looking Statements.”

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**OFFICIAL STATEMENT**

**RELATING TO**

**\$1,500,000,000**

**TEXAS TRANSPORTATION COMMISSION  
STATE HIGHWAY FUND FIRST TIER REVENUE BONDS,  
TAXABLE SERIES 2010  
(BUILD AMERICA BONDS - DIRECT PAYMENT)**

**INTRODUCTION**

The purpose of this Official Statement (which includes the Appendices hereto) is to furnish information concerning the offering of the “Texas Transportation Commission State Highway Fund First Tier Revenue Bonds, Taxable Series 2010 (Build America Bonds - Direct Payment)” (the “Bonds”), which are being issued by the Texas Transportation Commission (the “Commission”), the governing body of the Texas Department of Transportation (the “Department”), an agency of the State of Texas (the “State”), in the principal amount set forth above. The Bonds are being issued pursuant to the authority granted to the Commission by Article III, Section 49-n of the Texas Constitution; Section 222.003, Texas Transportation Code (the “Act”); Chapter 1371, Texas Government Code; and the “Second Amended and Restated Master Resolution Establishing a Financing Program for Bonds, Other Public Securities and Credit Agreements Secured by and Payable from Revenue Deposited to the Credit of the State Highway Fund” dated as of April 23, 2010 and adopted by minute order of the Commission (the “Master Resolution”), as supplemented by the “Fifth Supplemental Resolution” to the Master Resolution adopted by minute order of the Commission on February 25, 2010 (the “Fifth Supplemental Resolution”) and an Award Certificate of Departmental Representative executed on July 27, 2010 (the “Award Certificate”). The Master Resolution, the Fifth Supplemental Resolution and the Award Certificate are sometimes jointly referred to herein as the “Resolution.” Capitalized terms used in this Official Statement have the same meanings assigned to such terms in the Resolution, as set forth in APPENDIX A - “DEFINITIONS AND EXCERPTED PROVISIONS OF THE RESOLUTION,” except as otherwise indicated herein.

On September 13, 2003, the voters of the State approved an amendment to the Texas Constitution, Article III, Section 49-n, as added by Acts 2003, 78th Texas Legislature, H.J.R. No. 28, Section 1 (“Section 49-n”), which permits the Texas Legislature (the “Legislature”) to authorize the Commission to issue bonds and other public securities to fund State highway improvement projects payable from certain revenues deposited to the credit of the State Highway Fund (the “Fund” or the “State Highway Fund”) held in the State treasury.

Pursuant to the Act, the Legislature has authorized the Commission to issue bonds and other public securities to finance (i) State highway improvement projects, (ii) reserve and contingency funds for such bonds and other public securities, and (iii) the costs of issuing such bonds or securities and entering into credit agreements related to such bonds and securities. The Act provides that bonds (including the Bonds) and public securities issued, and credit agreements entered into, are secured by a pledge of and payable from certain revenues deposited to the credit of the Fund, and amounts needed for payments due on such bonds, public securities, and credit agreements are appropriated from the Fund by Section 49-n for that purpose. Section 49-n further provides that the dedication or appropriation of revenue to the credit of the Fund may not be modified so as to impair any outstanding bonds or other public securities secured by a pledge of revenues in the Fund unless provisions have been made for a full discharge of such bonds or securities. The Act, as amended in 2007, increases the authority of the Commission to issue up to \$6 billion aggregate principal amount of bonds and other public securities (increased from the previous \$3 billion maximum), provided the Commission may not issue more than \$1.5 billion aggregate principal amount of bonds and other public securities in any year (increased from the previous \$1 billion annual maximum). Section 49-n, however, does not restrict the authority of the Legislature to modify or remove the limitations on the issuance of bonds and other public securities contained in the Act.

Revenues deposited to the credit of the Fund include certain constitutionally dedicated revenues and certain non-dedicated revenues. Article VIII, Section 7-a of the Texas Constitution (“Section 7-a”) dedicates (i) 75% of the net revenues generated from the State motor fuels tax (net of enforcement, administrative and refund charges), (ii) the State tax on motor lubricants and (iii) the net revenues generated from the State motor vehicle registration fees (net of collection charges and the portion of such fees that is reserved for counties within the State) to the acquisition of rights-of-way; construction, maintenance, and policing of public roadways; and for the administration of laws

pertaining to the supervision of traffic and safety on such public roads. Pursuant to Article VIII, Section 7-b of the Texas Constitution (“Section 7-b”), revenues received from the federal government as reimbursement for State expenditures of funds made for the purposes authorized by Section 7-a are dedicated to those purposes. Revenues dedicated for the purposes provided by Section 7-a and Section 7-b are deposited to the credit of the Fund and, by virtue of such deposit, are pledged to the payment of the Bonds. Certain non-dedicated revenues are also deposited to the credit of the Fund, though the Legislature could seek to re-direct such revenues for other purposes, subject to Section 49-n described above. See “THE BONDS - Source of Payment for Bonds,” “THE STATE HIGHWAY FUND - General,” “- Sources of Revenue in the Fund” and “INVESTMENT CONSIDERATIONS” herein.

Pursuant to the Resolution, the Commission has established a financing program (the “Program”) to facilitate the Commission’s exercise of the powers and authority conferred by the Act through the issuance, execution and delivery of obligations. In accordance with the Program, the Resolution provides for and authorizes the issuance of the Bonds as First Tier Senior Obligations, and the Commission has pledged as security for the payment of the Bonds and any additional First Tier Senior Obligations all right, title, and interest of the Commission in and to the Pledged Revenues. See “THE BONDS - Source of Payment for Bonds” and “- Flow of Funds.” See “THE BONDS - Outstanding and Additional Senior Obligations and Tiers of Senior Obligations” for a description of the presently outstanding Previously Issued First Tier Senior Obligations (defined herein). In the Resolution, the Commission has reserved the right to issue or otherwise incur additional First Tier Senior Obligations on parity with the Bonds. In addition, the Commission has reserved the right to establish additional Tiers for Senior Obligations to be secured by a lien on the Pledged Revenues that are junior and subordinate to the lien securing payment of First Tier Senior Obligations. The Master Resolution also reserves and recognizes the right of the Commission to issue and otherwise incur Subordinate Obligations payable from or secured by the State Highway Fund Revenues, subject to the prior lien and security interest on the Fund securing payment of First Tier Senior Obligations (including the Bonds) and any other Senior Obligations. The Commission has previously issued five series of Senior Obligations as First Tier Senior Obligations in the aggregate principal amount of \$2,957,390,000, which were outstanding in the aggregate principal amount of \$2,687,655,000 as of July 1, 2010. The Fifth Supplemental Resolution authorizes the issuance of bonds in one or more series in an aggregate principal amount not to exceed \$2.9 billion; provided that not more than \$1.5 billion of bonds may be issued in any fiscal year. In addition, the Fifth Supplemental Resolution authorizes the issuance of additional First Tier Senior Obligations for the purpose of refunding previously issued First Tier Senior Obligations in the event that certain savings criteria are satisfied. The Bonds constitute the first installment of obligations delivered under authority of the Fifth Supplemental Resolution pursuant to the Award Certificate. See “THE BONDS - Outstanding and Additional Senior Obligations and Tiers of Senior Obligations,” “- Issuance of Subordinate Obligations,” “THE STATE HIGHWAY FUND - Uses of the Fund - Capital Projects and Proposed Debt Financings,” “- Subordinate Obligations” and APPENDIX A - “DEFINITIONS AND EXCERPTED PROVISIONS OF THE RESOLUTION.”

Pursuant to the Act, the Commission may enter into “Credit Agreements” that are secured by a pledge of and payable from certain revenues deposited to the credit of the Fund. The Commission has previously entered into a Credit Agreement related to the “Texas Transportation Commission State Highway Fund First Tier Revenue Bonds, Series 2006-B (Variable Rate Bonds).” See “THE BONDS - Credit Agreements.”

This Official Statement includes descriptions of the Bonds, the Fund, the Commission, the Department, the State and certain other matters, along with summaries and excerpts of portions of the Resolution and a summary of the Funds Management Agreement. The excerpts and summaries of documents contained herein do not purport to be complete or verbatim and are qualified in their entirety by reference to the respective documents. Copies of the Resolution and the Funds Management Agreement are available for inspection at the offices of the Department, DeWitt C. Greer State Office Building, 125 East 11th Street, Austin, Texas 78701. Reference is made to the section herein captioned “DESCRIPTION OF THE TRANSACTION DOCUMENTS” and APPENDIX A - “DEFINITIONS AND EXCERPTED PROVISIONS OF THE RESOLUTION” for the definitions of certain terms used herein.

This Official Statement speaks only as of its date, and the information contained herein is subject to change. A copy of this Official Statement will be submitted to the Municipal Securities Rulemaking Board (the “MSRB”) through its Electronic Municipal Market Access (“EMMA”) system. See “CONTINUING DISCLOSURE OF INFORMATION” for a description of the Commission’s undertaking to provide certain information on a continuing basis.

**PLAN OF FINANCE**

**General**

Pursuant to the Act, the proceeds of the Bonds will be used to (i) finance State highway improvement projects that are eligible for funding with revenues dedicated under Section 7-a and (ii) pay the costs of issuing the Bonds. "Highway improvements" include the construction, reconstruction, maintenance, and the making of necessary plans or surveys before beginning construction, reconstruction, or maintenance, for public roads or parts of public roads, including the acquisition of rights-of-way, bridges, culverts, buildings, or other necessary structures related to public roads which are part of the State Highway System.

**SOURCES AND USES OF FUNDS**

The proceeds from the sale of the Bonds are estimated to be applied as follows:

Sources:		
	Principal Amount	\$ 1,500,000,000.00
	Total	\$ <u>1,500,000,000.00</u>
Uses:		
	Deposit to Bond Proceeds Fund	\$ 1,491,154,003.50
	Underwriters' Discount	7,995,000.00
	Estimated Costs of Issuance	<u>850,996.50</u>
	Total	\$ <u>1,500,000,000.00</u>

Table 1

## DEBT SERVICE REQUIREMENTS AND PROJECTED COVERAGE

Fiscal Year	Outstanding First Tier Senior Obligations <sup>(1)</sup>	The Bonds		Total Debt Service	BAB Subsidy <sup>(2)</sup>	Net Debt Service	Total Debt Service (before subsidy)	Total Debt Service (net of subsidy)	Fiscal Year 2009 Pledged Revenues <sup>(3)</sup>	Aggregate Debt Service Coverage (before subsidy)	Aggregate Debt Service Coverage (net of subsidy)
		Principal	Interest								
2010	\$ 239,605,800	-	-	-	-	-	\$ 239,605,800	\$ 239,605,800	\$6,450,500,000	26.92 x	26.92 x
2011	239,604,800	-	\$ 50,625,978	\$ 50,625,978	\$ (17,719,092)	\$ 32,906,885	290,230,778	272,511,685	6,450,500,000	22.23	23.67
2012	239,595,800	-	77,226,068	77,226,068	(27,029,124)	50,196,944	316,821,868	289,792,744	6,450,500,000	20.36	22.26
2013	239,609,300	-	77,226,068	77,226,068	(27,029,124)	50,196,944	316,835,368	289,806,244	6,450,500,000	20.36	22.26
2014	239,601,525	-	77,226,068	77,226,068	(27,029,124)	50,196,944	316,827,593	289,798,469	6,450,500,000	20.36	22.26
2015	239,598,100	-	77,226,068	77,226,068	(27,029,124)	50,196,944	316,824,168	289,795,044	6,450,500,000	20.36	22.26
2016	239,593,863	-	77,226,068	77,226,068	(27,029,124)	50,196,944	316,819,930	289,790,806	6,450,500,000	20.36	22.26
2017	239,604,263	-	77,226,068	77,226,068	(27,029,124)	50,196,944	316,830,330	289,801,206	6,450,500,000	20.36	22.26
2018	239,602,163	-	77,226,068	77,226,068	(27,029,124)	50,196,944	316,828,230	289,799,106	6,450,500,000	20.36	22.26
2019	239,600,163	-	77,226,068	77,226,068	(27,029,124)	50,196,944	316,826,230	289,797,106	6,450,500,000	20.36	22.26
2020	239,592,413	-	77,226,068	77,226,068	(27,029,124)	50,196,944	316,818,480	289,789,356	6,450,500,000	20.36	22.26
2021	239,605,163	-	77,226,068	77,226,068	(27,029,124)	50,196,944	316,831,230	289,802,106	6,450,500,000	20.36	22.26
2022	239,597,413	-	77,226,068	77,226,068	(27,029,124)	50,196,944	316,823,480	289,794,356	6,450,500,000	20.36	22.26
2023	239,604,163	\$ 70,495,000	77,226,068	147,721,068	(27,029,124)	120,691,944	387,325,230	360,296,106	6,450,500,000	16.65	17.90
2024	239,592,663	72,855,000	73,681,579	146,536,579	(25,788,553)	120,748,026	386,129,241	360,340,689	6,450,500,000	16.71	17.90
2025	239,604,113	75,265,000	70,018,430	145,283,430	(24,506,450)	120,776,979	384,887,542	360,381,092	6,450,500,000	16.76	17.90
2026	240,033,509	77,340,000	66,234,105	143,574,105	(23,181,937)	120,392,168	383,607,614	360,425,677	6,450,500,000	16.82	17.90
2027	116,155,113	203,795,000	62,345,450	266,140,450	(21,820,908)	244,319,543	382,295,563	360,474,655	6,450,500,000	16.87	17.89
2028	13,571,988	313,355,000	51,792,945	365,147,945	(18,127,531)	347,020,414	378,719,933	360,592,402	6,450,500,000	17.03	17.89
2029	-	337,665,000	35,567,423	373,232,423	(12,448,598)	360,783,825	373,232,423	360,783,825	6,450,500,000	17.28	17.88
2030	-	349,230,000	18,083,129	367,313,129	(6,329,095)	360,984,034	367,313,129	360,984,034	6,450,500,000	17.56	17.87
<b>Total</b>	<b>\$4,203,372,309</b>	<b>\$1,500,000,000</b>	<b>\$1,355,061,849</b>	<b>\$2,855,061,849</b>	<b>\$ (474,271,647)</b>	<b>\$2,380,790,202</b>	<b>\$7,058,434,157</b>	<b>\$6,584,162,510</b>			

(1) For purposes of illustration, interest on the variable rate Series 2006-B Bonds, being a portion of the Outstanding First Tier Senior Obligations, is assumed at 2.38%, including remarketing and liquidity fees. See "THE BONDS - Outstanding and Additional Senior Obligations and Tiers of Senior Obligations."

(2) See "THE BONDS - Designation of the Bonds as 'Build America Bonds.'"

(3) See "THE STATE HIGHWAY FUND - Sources of Revenue in the Fund," "- Uses of the Fund - Capital Projects and Proposed Debt Financings" and "INVESTMENT CONSIDERATIONS - Appropriations from the Fund."

**Anticipated Issuance of Additional State Highway Fund Debt.** The Commission anticipates issuing an additional \$1.4 billion of First Tier Senior Obligations during the 2011/12 fiscal year. Assuming a flat five percent tax exempt interest rate and an average life of 13.6 years for such projected 2012 bond issuance, from fiscal year 2013 to fiscal year 2032, the Commission estimates that its maximum aggregate annual debt service on all outstanding First Tier Senior Obligations would be approximately (i) \$407 million net of any Federal Payments and (ii) \$434 million without consideration of any Federal Payments. Based on fiscal year 2009 revenues of \$6.45 billion, the Commission estimates that its projected debt service coverage after the issuance of such bonds would be (i) 15.86 net of any Federal Payments and (ii) 14.87 without consideration of any Federal Payments.

## THE BONDS

### General

The Bonds are being issued as taxable Bonds pursuant to the provisions of the Resolution, and have been designated as “Build America Bonds” under and pursuant to the authority provided for in the federal American Recovery and Reinvestment Act of 2009, effective February 17, 2009 (the “Recovery Act”), Sections 54AA and 6431 of the Code, and in accordance with the guidance included in the Internal Revenue Service’s Notice 2009-26, effective as of April 3, 2009 (“Notice 2009-26”) (see “THE BONDS - Build America Bonds” and “THE BONDS - Designation of the Bonds as ‘Build America Bonds’” herein).

The Bonds will be issued in book-entry form pursuant to the book-entry-only system described below. Beneficial owners of Bonds will not receive physical delivery of Bond certificates. The Bonds will be issued in fully registered form and purchases of Bonds are required to be in the denomination of \$5,000 or any integral multiple thereof. The Bonds will bear interest at the respective rates shown on the inside cover page of this Official Statement, calculated on the basis of a 360-day year composed of twelve months of 30 days each. The Bonds will mature in the respective principal amounts and on the respective dates shown on the inside cover page of this Official Statement. The Bonds will bear interest from the date of initial delivery, and such interest will be payable semiannually on each April 1 and October 1 (each an “Interest Payment Date”), commencing April 1, 2011.

### Build America Bonds

In February 2009, as part of the Recovery Act, Congress added Sections 54AA and 6431 to the Internal Revenue Code of 1986 (the “Code”), which permit state and local governments to obtain certain tax advantages when issuing taxable obligations that meet certain requirements of the Code and the related Treasury regulations. Such obligations are referred to as Build America Bonds. A Build America Bond is a qualified bond under Section 54AA(g) of the Code (a “Qualified Build America Bond”) if it meets certain requirements of the Code and the related Treasury Regulations and the issuer has made an irrevocable election to treat the bonds as Qualified Build America Bonds. Interest on Qualified Build America Bonds is not excluded from gross income for federal income tax purposes, and owners of Qualified Build America Bonds will not receive any tax credits or Federal Payments (defined below) as a result of ownership of such Qualified Build America Bonds. Issuers of Qualified Build America Bonds may apply to receive subsidy payments from the United States Department of the Treasury (the “Federal Payments”) equal to 35% of the taxable interest paid on such obligations on each Interest Payment Date.

### Designation of the Bonds as “Build America Bonds”

The Commission has designated and irrevocably elected to treat the Bonds as Qualified Build America Bonds for purposes of the Sections 54AA and 6431 of the Code, permitting the Commission to be eligible to receive the Federal Payments in connection with the Bonds. Pursuant to the Code, the Commission expects to receive Federal Payments from the United States Department of the Treasury equal to 35% of the interest payable on the Bonds on each Interest Payment Date.

Subject to any required State appropriation, the Commission will deposit or cause to be deposited all collections of Federal Payments into a subaccount of the First Tier Senior Obligation Debt Service Fund (the “Bonds Subaccount”). Funds in the Bonds Subaccount will be used solely for the purpose of paying principal of and interest on the Bonds and such funds will not be used to pay debt service on other First Tier Senior Obligations, other Senior Obligations or any Subordinate Obligations. The Department expects to receive future appropriations, to the extent required by applicable law, of the Federal Payments in connection with the annual debt service requirements for the Bonds. The Federal Payments received by the Commission will not be pledged to the payment of the Bonds and no holder of the Bonds will be entitled to a tax credit nor any Federal Payments with respect to the Bonds.

There is no assurance, however, that the Federal Payments will be received as anticipated. The timely receipt of the Federal Payments is subject to certain requirements, including the filing of Internal Revenue Service (the “IRS”) Form 8038-CP between 90 and 45 days prior to each interest payment date. The Federal Payments do not constitute a full faith and credit guarantee of the United States Government, but are required to be paid by the United States Department of the Treasury under the Recovery Act.

Furthermore, Section 403.0122 of the Texas Government Code (“Section 403.0122”) requires State agencies that receive money under the Recovery Act to deposit such money into a special fund created in the State treasury outside the general revenue fund (the “Recovery Act Fund”) as the State Comptroller determines is necessary to hold and account for

money received under the Recovery Act. The Comptroller has indicated that all payments made to the State from the federal government pursuant to the Recovery Act should initially be deposited in the Recovery Act Fund prior to the transfer of such funds to a debt service account. The Commission expects to file the required forms with the IRS in a timely manner and to receive the Federal Payments prior to or contemporaneously with the related interest payments on the Bonds, and does not expect that any requirement to process the Federal Payments through the Recovery Act Fund will have a material adverse effect on the timing of deposits of the Federal Payments in the Bonds Subaccount. Additionally, if the Federal Payments are not received by the Commission prior to or contemporaneously with each applicable Interest Payment Date for the Bonds, the Commission does not expect that such delay will interfere with the timely payment of interest on the Bonds.

In the Fifth Supplemental Resolution, the Commission covenants and agrees to take all actions required by law and applicable regulations as are necessary for the collection of Federal Payments in respect of Build America Bonds for which there has been made an irrevocable election pursuant to Section 54AA of the Code to receive direct payment of the credit provided in Section 6431 of the Code. Notwithstanding such covenant, no assurances are provided that the Commission will receive the Federal Payments. The amount of any Federal Payment is subject to legislative changes by Congress. Federal Payments will only be paid if the Bonds are Qualified Build America Bonds. For the Bonds to be and remain Qualified Build America Bonds, the Commission must comply with certain covenants and the Commission must establish certain facts and expectations with respect to the Bonds, the use and investment of proceeds thereof and the use of property financed therewith. If the Commission fails to comply with the conditions of the United States Department of the Treasury for the continued receipt of the Federal Payments throughout the term of the Bonds, it may no longer receive the Federal Payments and could be subject to a claim for return of previously received Federal Payments. If the Commission fails to file IRS Form 8038-CP in a timely fashion, it is possible that the Commission will never receive such Federal Payments.

Federal Payments (as well as other federal monies received by the Department) may be subject to offset against certain amounts that may, for unrelated reasons, be owed by the Commission or the Department to an agency of the United States of America. The Department has a discrete Federal Employer Identification Number which is not shared with other State agencies and has put in place procedures to minimize the risk of any offset.

#### **Payment of the Bonds**

**General.** The record date (“Record Date”) for determining the person to whom interest is payable on any Interest Payment Date means the close of business on the fifteenth day of the calendar month immediately preceding such Interest Payment Date.

In the event of a non-payment of interest on the Bonds on a scheduled payment date, and for 30 days thereafter, a new record date for such interest payment (a “Special Record Date”) will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Commission. Notice of the Special Record Date and of the scheduled payment date of the past due interest (“Special Payment Date,” which must be 15 days after the Special Record Date) shall be sent at least five business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each owner of a Bond (an “Owner”) appearing on the registration books of the Paying Agent/Registrar at the close of business on the last business day immediately preceding the date of mailing of such notice.

Principal and redemption price of and interest on the Bonds will be payable in any currency of the United States that, on the respective dates of payment thereof, is legal tender for the payment of public and private debts. The principal and redemption price of all Bonds will be payable at the designated office of the Paying Agent/Registrar, and payment of the interest on each Bond will be made on each Interest Payment Date to the Owner thereof whose name appears in the security register at the close of business on the Record Date, by (i) check or draft mailed to such Owner at his address as it appears on such security register, or (ii) such other method, acceptable to the Paying Agent/Registrar, requested in writing by, and at the risk and expense of, the Owner; provided, however, that so long as Cede & Co. (or other DTC nominee) is the registered owner of the Bonds, all payments will be made as described under APPENDIX E – “DESCRIPTION OF BOOK-ENTRY-ONLY SYSTEM AND GLOBAL CLEARANCE PROCEDURES” herein.

In the event that any date for payment of the principal, redemption price or interest on the Bonds is a Saturday, Sunday, legal holiday, or day on which banking institutions in the city where the designated office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment will be the next succeeding day that is not a Saturday, Sunday, legal holiday or day on which such banking institutions are authorized to close. Payment on such later date will not increase the amount of interest due and will have the same force and effect as if made on the original date that payment was due.

## Redemption Provisions

**Mandatory Sinking Fund Redemption.** The Bonds stated to mature on April 1 in each of the years 2026 and 2030 (the “Term Bonds”) are subject to mandatory sinking fund redemption prior to maturity. The Term Bonds must be redeemed by the Paying Agent/Registrar in part prior to maturity at the redemption price of par plus interest accrued to the date of redemption, and without premium, on the dates and in the principal amounts set forth in the following schedule:

Term Bonds Maturing April 1, 2026		Term Bonds Maturing April 1, 2030	
Redemption Date	Principal Amount	Redemption Date	Principal Amount
April 1, 2023	\$ 70,495,000	April 1, 2027	\$ 203,795,000
April 1, 2024	72,855,000	April 1, 2028	313,355,000
April 1, 2025	75,265,000	April 1, 2029	337,665,000
April 1, 2026 <sup>(1)</sup>	77,340,000	April 1, 2030 <sup>(1)</sup>	349,230,000

<sup>(1)</sup> Stated Maturity.

At the direction of the Commission, the Paying Agent/Registrar shall apply moneys held in the First Tier Senior Obligation Debt Service Fund prior to the forty-fifth (45th) day preceding a mandatory sinking fund redemption date to the purchase of Term Bonds of the maturity that are subject to such sinking fund redemption, at prices not exceeding the redemption price payable for such Bonds pursuant to such mandatory sinking fund redemption, plus unpaid interest accrued to the date of purchase. Upon such purchase of such Bonds, the Paying Agent/Registrar shall credit an amount equal to the principal of the Term Bonds so purchased towards the mandatory sinking fund installment amounts for the Bonds of such maturity on a pro rata basis in accordance with a certificate of a Department Representative, which will direct the reduction of a ratable portion of each annual mandatory sinking fund installment requirement; provided, however, that any such selection shall be subject to the authorized denominations applicable to the Bonds.

**Make-Whole Redemption.** The Bonds are subject to redemption prior to their respective maturity dates at the option of the Commission, in whole or in part, on any date at a redemption price equal to the greater of:

- (i) 100% of the principal amount of the Bonds to be redeemed; or
- (ii) the sum of the present values of the remaining scheduled payments of principal of, and interest on, the Bonds to be redeemed, not including any portion of those payments of interest accrued and unpaid as of the date on which the Bonds are to be redeemed, discounted to the redemption date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the “Treasury Rate” (defined below) plus (a) 15 basis points, with respect to the Bonds maturing on April 1, 2026, or (b) 20 basis points, with respect to the Bonds maturing on April 1, 2030,

plus, in each case, accrued and unpaid interest on the Bonds to be redeemed on the redemption date.

For purpose of determining such “Make-Whole Redemption Price,” the following definitions apply:

“Treasury Rate” means, with respect to any redemption date for a particular Bond, the rate per annum, expressed as a percentage of the principal amount, equal to the semiannual equivalent yield to maturity or interpolated maturity of the Comparable Treasury Issue, assuming that the Comparable Treasury Issue is purchased on the redemption date for a price equal to the Comparable Treasury Price, as calculated by the Designated Investment Banker.

“Comparable Treasury Issue” means, with respect to any redemption date for a particular Bond, the United States Treasury security or securities selected by the Designated Investment Banker which has an actual or interpolated maturity comparable to the remaining average life of the Bond to be redeemed, and that would be utilized in accordance with customary financial practice in pricing new issues of debt securities of comparable maturity to the remaining average life of the Bonds to be redeemed.

“Comparable Treasury Price” means, with respect to any redemption date for a particular Bond, (i) if the Designated Investment Banker receives at least four Reference Treasury Dealer Quotations, the average of such quotations for such redemption date, after excluding the highest and lowest Reference Treasury Dealer Quotations, or (ii) if the Designated Investment Banker obtains fewer than four Reference Treasury Dealer Quotations, the average of all such quotations.

“Designated Investment Banker” means one of the Reference Treasury Dealers appointed by the Commission.

“Reference Treasury Dealer” means each of the four firms, specified by the Commission from time to time, that are primary United States Government securities dealers in the City of New York (each a “Primary Treasury Dealer”); provided, however, that if any of them ceases to be a Primary Treasury Dealer, the Commission will substitute another Primary Treasury Dealer.

“Reference Treasury Dealer Quotations” means, with respect to each Reference Treasury Dealer and any redemption date for a particular Bond, the average, as determined by the Designated Investment Banker, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Designated Investment Banker by such Reference Treasury Dealer at 3:30 P.M., New York City time, on the third Business Day preceding such redemption date.

***Extraordinary Optional Redemption.*** The Bonds are subject to redemption prior to their stated maturity dates at the option of the Commission, in whole or in part upon the occurrence of an Extraordinary Event, at a redemption price (the “Extraordinary Redemption Price”) equal to the greater of:

- (1) 100% of the principal amount of the Bonds to be redeemed; or
- (2) the sum of the present values of the remaining scheduled payments of principal of, and interest on, the Bonds to be redeemed, not including any portion of those payments of interest accrued and unpaid as of the date on which the Bonds are to be redeemed, discounted to the redemption date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the “Treasury Rate” (defined above) plus 100 basis points,

plus, in each case, accrued and unpaid interest on the Bonds to be redeemed on the redemption date.

An “Extraordinary Event” will have occurred if a material adverse change has occurred to Section 54AA or 6431 of the Internal Revenue Code of 1986, as amended (the “Code”) (as such Sections were added by Section 1531 of the Recovery Act, pertaining to “Build America Bonds”) pursuant to which the Commission’s 35% cash subsidy payment from the United States Treasury is reduced or eliminated.

At the request of the Paying Agent/Registrar, the Make-Whole Redemption Price or the Extraordinary Redemption Price will be determined by the Designated Investment Banker. The Paying Agent/Registrar and the Commission may conclusively rely on the determination of such redemption price by the Designated Investment Banker and will not be liable for such reliance.

### **Selection of Bonds to be Redeemed**

So long as the Bonds are registered in book-entry-only form and so long as DTC or a successor securities depository is the sole registered owner of the Bonds, partial redemptions of Bonds will be treated by DTC as a “pro rata pass-through distribution of principal” in accordance with DTC rules and procedures. It is the Commission’s intent that the redemption allocations made by DTC, the DTC Participants and such other intermediaries that may exist between the Commission and the beneficial owners be made on a pro rata pass-through distribution of principal basis. However, so long as the Bonds are held in book-entry form, the selection for redemption of such Bonds shall be made in accordance with the operational arrangements of DTC then in effect, which currently provide for adjustment of the principal by a factor provided pursuant to DTC operational arrangements. Neither the Commission nor the Underwriters can provide any assurance that DTC, the DTC Participants or any other intermediaries will allocate redemptions among beneficial owners on a pro rata pass-through distribution of principal basis. If (i) the Paying Agent/Registrar does not provide the necessary information and identify the redemption as on a pro rata pass-through distribution of principal basis or (ii) if DTC operational arrangements do not allow for the redemption of the Bonds on a pro rata pass-through distribution of principal basis, the Bonds will be selected for redemption, in accordance with DTC procedures, by lot.

If the Bonds are no longer registered in book-entry-only form, any redemption of less than all of the Bonds of any maturity will be effected by the Paying Agent/Registrar among the registered owners of such Bonds as nearly as practicable in proportion to the principal amounts of the Bonds of such maturity owned by each registered owner; provided, however, that any such selection shall be subject to the authorized denominations applicable to the Bonds. This will be calculated based on the formula: (principal amount of applicable maturity to be redeemed) x [(principal amount of applicable maturity owned by

owner) / (principal amount of applicable maturity outstanding)]. The particular Bonds to be redeemed will be determined by the Commission, using such method as it deems fair and appropriate.

***Retention of Rights.*** To the extent that the Commission has defeased any Outstanding Bonds pursuant to the provisions of the Fifth Supplemental Resolution (the “Defeased Debt”) to their stated maturity, the Commission retains the right under State law to later call that Defeased Debt for redemption in accordance with the provisions of the Fifth Supplemental Resolution and the Award Certificate relating to the Defeased Debt. The Commission may call such Defeased Debt for redemption upon complying with the provisions of State law and upon the satisfaction of certain provisions of the Fifth Supplemental Resolution with respect to such Defeased Debt as though it was being defeased at the time of the exercise of the option to redeem the Defeased Debt, and the effect of the redemption is taken into account in determining the sufficiency of the provisions made for the payment of the Defeased Debt.

## **Notice of Redemption**

Unless waived by any Owner of the Bonds to be redeemed, a Department Representative shall give notice of redemption or defeasance to the Paying Agent/Registrar at least thirty-five (35) days prior to a redemption date in the case of a redemption (unless a lesser period is acceptable to the Paying Agent/Registrar) and on the defeasance date in the case of a defeasance and the Paying Agent/Registrar shall give notice of redemption or of defeasance of Bonds by mail, first-class postage prepaid at least thirty (30) days prior to a redemption date and within thirty (30) days after a defeasance date to each Owner and to the central post office or each registered securities depository and to any national information service that disseminates such notices. In addition, in the event of a redemption caused by an advance refunding of the Bonds, the Paying Agent/Registrar shall send a second notice of redemption to the persons specified in the immediately preceding sentence at least thirty (30) days but not more than ninety (90) days prior to the actual redemption date. Any notice sent to the central post office or registered securities depositories or such national information services shall be sent so that they are received at least two (2) days prior to the general mailing or publication date of such notice. The Paying Agent/Registrar shall also send a notice of prepayment or redemption to the Owner of any Bond who has not sent such Bonds in for redemption sixty (60) days after the redemption date therefor.

Each notice of redemption or defeasance shall contain a description of the Bonds to be redeemed or defeased including the complete name of the Bonds, the date of issue, the interest rate, the maturity date, the CUSIP number, the certificate numbers, the amounts called of each certificate, the publication or mailing date for the notice, the date of redemption or defeasance, the redemption price, if any, the name of the Paying Agent/Registrar, and the address at which the Bonds may be redeemed or paid, including a contact person telephone number.

All redemption payments made by the Paying Agent/Registrar to the Owners of the Bonds shall include a CUSIP number relating to each amount paid to such Owner.

The failure of any Owner of the Bonds to receive notice given as provided above, or any defect therein, shall not affect the validity of any proceedings for the redemption of any Bonds. Any notice mailed as provided above shall be conclusively presumed to have been duly given and shall become effective upon mailing, whether or not any Owner receives such notice.

So long as DTC is effecting book-entry transfers of the Bonds, the Paying Agent/Registrar shall provide the notices specified above only to DTC. It is expected that DTC shall, in turn, notify its participants and that the participants, in turn, will notify or cause to be notified the beneficial owners. Any failure on the part of DTC or a participant, or failure on the part of a nominee of a beneficial owner of a Bond to notify the beneficial owner of the Bond so affected, shall not affect the validity of the redemption of such Bonds. See the subcaption “Redemption Through DTC” below.

With respect to any optional redemption of the Bonds, unless certain prerequisites to such redemption required by the Master Resolution or the Fifth Supplemental Resolution have been met and moneys sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed shall have been received by the Paying Agent prior to the giving of such notice of redemption, such notice shall state that said redemption may, at the option of the Commission, be conditional upon the satisfaction of such prerequisites and receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon any prerequisite set forth in such notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption and sufficient moneys are not received, such notice shall be of no further force and effect, the Commission shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

## **Purchase in Lieu of Redemption**

Notwithstanding anything in the Fifth Supplemental Resolution to the contrary, all or a portion of the Bonds to be redeemed as specified in the notice of redemption may be purchased by the Paying Agent/Registrar at the direction of a Department Representative on the date which would be the redemption date if such Bonds were redeemed rather than purchased in lieu thereof at a purchase price equal to the redemption price which would have been applicable to such Bonds on the redemption date for the account of and at the direction of a Department Representative who shall give the Paying Agent/Registrar notice at least forty-five (45) days prior to the scheduled redemption date for the Bonds accompanied by a Favorable Opinion of Bond Counsel. In the event the Paying Agent/Registrar is so directed to purchase Bonds in lieu of optional redemption, no notice to the Owners of the Bonds to be so purchased (other than the notice of redemption otherwise required under the Fifth Supplemental Resolution) shall be required, and the Paying Agent/Registrar shall be authorized to apply to such purchase the funds which would have been used to pay the redemption price for such Bonds if such Bonds had been redeemed rather than purchased. Each Bond so purchased shall not be canceled or discharged and shall be registered in the name of the Commission and such purchase is not intended to extinguish or merge such debt. The Bonds to be purchased pursuant to the foregoing provisions which are not delivered to the Paying Agent/Registrar on the purchase date shall be deemed to have been so purchased and not optionally redeemed on the purchase date and shall cease to accrue interest as to the former Owner on the purchase date.

## **Redemption Through DTC**

The Paying Agent/Registrar and the Commission, so long as the book-entry-only system is used for the Bonds, will send any notice of redemption, notice of proposed amendment to the Resolution, or other notices with respect to the Bonds only to DTC. Any failure by DTC to advise any Direct Participant (defined in APPENDIX E - "DESCRIPTION OF BOOK-ENTRY-ONLY SYSTEM AND GLOBAL CLEARANCE PROCEDURES"), or of any Direct Participant or Indirect Participant (defined in APPENDIX E - "DESCRIPTION OF BOOK-ENTRY-ONLY SYSTEM AND GLOBAL CLEARANCE PROCEDURES") to notify the beneficial owner, will not affect the validity of the redemption of the Bonds called for redemption or any other action premised on any such notice. Redemption of portions of the Bonds by the Commission will reduce the outstanding principal amount of such Bonds held by DTC. In such event, DTC may implement, through its book-entry-only system, a redemption of such Bonds held for the account of Direct Participants in accordance with its rules or other agreements with Direct Participants and then Direct Participants and Indirect Participants may implement a redemption of such Bonds from the Beneficial Owners (defined in APPENDIX E - "DESCRIPTION OF BOOK-ENTRY-ONLY SYSTEM AND GLOBAL CLEARANCE PROCEDURES"). Any such selection of Bonds to be redeemed will not be governed by the Resolution and will not be conducted by the Commission or the Paying Agent/Registrar. Neither the Commission nor the Paying Agent/Registrar will have any responsibility to Direct Participants, Indirect Participants, or the persons for whom Direct Participants act as nominees, with respect to the payments on the Bonds or the providing of notice to Direct Participants, Indirect Participants, or Beneficial Owners of the selection of portions of the Bonds for redemption. See "APPENDIX E - DESCRIPTION OF BOOK-ENTRY-ONLY SYSTEM AND GLOBAL CLEARANCE PROCEDURES."

## **Source of Payment for Bonds**

Pursuant to the Resolution, the Pledged Revenues are pledged to the Owners of the Bonds as security for the payment of the Bonds. "Pledged Revenues" means all State Highway Fund Revenues deposited to the credit of the Fund, together with any additional monies as may in the future be authorized by law to be pledged as security for Senior Obligations (and that are so pledged pursuant to a supplemental resolution). "State Highway Fund Revenues" means all revenues deposited in, or appropriated or dedicated by law for deposit into, the State treasury to the credit of the Fund, including (i) Dedicated Registration Fees, (ii) Dedicated Taxes, (iii) Dedicated Federal Revenues, (iv) amounts collected or received pursuant to other State Highway Fund Revenue Law, and (v) any interest or earnings from the investment of Dedicated Registration Fees, Dedicated Taxes and Dedicated Federal Revenues; provided that State Highway Fund Revenues do not include moneys and investments deposited in, or appropriated or dedicated by law for deposit into, the following funds: (i) the State Infrastructure Bank Account and any Proceeds Fund, Interest and Sinking Fund, Reserve Fund or Rebate Fund and (ii) any special fund, subfund, account or subaccount in the Fund created for the purpose of receiving, holding and administering Restricted Revenues. "Dedicated Registration Fees" means revenues derived from the motor vehicle registration fees dedicated by Section 7-a for the purpose of acquiring rights-of-way; constructing, maintaining, and policing public roadways; and for the administration of such laws as may be prescribed by the Legislature pertaining to the supervision of traffic and safety on such roads (the "Authorized Purposes"). "Dedicated Taxes" means revenues derived from taxes on motor fuels and lubricants dedicated by Section 7-a for Authorized Purposes. "Dedicated Federal Revenues" means all revenues received from the federal government as reimbursement of State expenditures pursuant to Section 7-a made for the purposes authorized by

Section 7-a and dedicated by Section 7-b to the acquisition of rights-of-way and the construction, maintenance, and policing of public roadways. See "THE STATE HIGHWAY FUND" herein.

The Act provides that bonds (including the Bonds) and public securities issued, and credit agreements entered into, are secured by a pledge of and payable from revenues deposited to the credit of the Fund, and amounts needed for payments due on bonds, public securities, and credit agreements are appropriated by Section 49-n for that purpose. Section 49-n further provides that the dedication or appropriation of revenue to the credit of the Fund may not be modified so as to impair any outstanding bonds or other public securities secured by a pledge of revenues in the Fund unless provisions have been made for a full discharge of such bonds or other public securities.

### **Flow of Funds**

Consistent with the pledge of Pledged Revenues on a prior lien basis to secure Senior Obligations, including the Bonds, in accordance with their respective terms, Pledged Revenues will be applied for the following uses and in the order of priority shown below:

- (i) First: to the payment of all Costs incurred as First Tier Senior Obligations as, when and to the extent provided by each First Tier Senior Obligation and the related Supplemental Resolution; and
- (ii) Second: to the payment of the amounts required to be deposited and credited to each reserve, contingency or other similar fund or account created and established in accordance with the provisions of any Supplemental Resolution relating to First Tier Senior Obligations and to the payment of other Costs related to First Tier Senior Obligations, as, when, and to the extent provided in the related Supplemental Resolution; provided, that such payments will be allocated among the then Outstanding issues or series of First Tier Senior Obligations and made on a pro rata basis (with such proration to be determined on the basis that the Outstanding principal amount of each particular issue or series of First Tier Senior Obligations bears to the aggregate Outstanding principal amount of all issues or series of First Tier Senior Obligations for which payments are to be made in accordance with this clause (ii)); and
- (iii) Third: to the payment of (A) all Costs incurred as Senior Obligations other than First Tier Senior Obligations, on a priority basis consistent with their respective Tiers as, when, and to the extent provided by each such Senior Obligation and the related Supplemental Resolution, and (B) all deposits into each reserve, contingency or other similar fund or account created and established for the benefit of Senior Obligations on a priority basis consistent with their respective Tiers and in accordance with the provisions of the Supplemental Resolution relating to such Senior Obligation; and
- (iv) Fourth: to the payment of all Costs incurred as Subordinate Obligations (together with any related funding obligations) as, when and to the extent provided by each Subordinate Obligation and any order, resolution, contract or other agreement related thereto; and
- (v) Fifth: to (A) the payment of expenditures for public roadways in accordance with the State Constitution and federal law or (B) to the extent not required to be used for public roadways by the State Constitution or federal law, to the payment of any lawful expenditure for any lawful purpose.

In recognition that (i) expenditures from the Fund may be made for the foregoing uses on various dates throughout each Fiscal Year, (ii) Senior Obligations have a prior lien on and claim to the Pledged Revenues, and (iii) during each Fiscal Year, Costs incurred as Subordinate Obligations may become due and payable, and payments for lawful expenditures may be made, before the date or dates that Costs incurred as Senior Obligations have become due and payable, the Commission has covenanted that no Pledged Revenues will be used to pay Costs incurred as Subordinate Obligations or for other lawful expenditures during any Fiscal Year to the extent that such payment is reasonably expected to result in the inability of the Commission to pay any Cost of a Senior Obligation coming due during such Fiscal Year.

If at any time, the full amounts required by the Master Resolution or any Supplemental Resolution are not transferred at the times required to any fund or account maintained pursuant to the Master Resolution or any Supplemental Resolution for the benefit of the Owners of the Senior Obligations, amounts equivalent to such deficiency will be transferred to such fund or account, in order of priority based on the respective Tiers of the affected Senior Obligations, from the first available Pledged Revenues not allocated to Senior Obligations of a prior Tier (in addition to the amounts otherwise required to be transferred to such funds and accounts pursuant to the Master Resolution during any succeeding period), and no Pledged Revenues will be

transferred to any fund or account established or maintained for the benefit of any Subordinate Obligation, nor shall any Pledged Revenues be used for any other purpose, until such deficiency has been restored.

“Cost”, as used herein, means any financial commitment or agreement to pay money incurred or arising in connection with or related to an Obligation, including commitments or agreements to (i) pay or reimburse principal, premium or interest in respect of a public security or other obligation, (ii) pay amounts owed in connection with or related to Credit Agreements (including scheduled payments, termination payments and other commitments to pay money arising under or pursuant to a swap or other derivative or hedging agreement) or to reimburse payments of others in connection therewith or related thereto, and (iii) pay or reimburse any fees or expenses of a Fiscal Agent or other agent retained in connection with or related to any Obligation. For the avoidance of doubt, all Annual Debt Service Requirements constitute “Costs”.

### **Transfer, Exchange and Registration**

The Paying Agent/Registrar will obtain, record, and maintain in the security register the name and address of each Owner, and any Bond may, in accordance with its terms and the terms of the Resolution, be transferred or exchanged for new Bonds of Authorized Denominations upon the security register by the Owner, in person or by his duly authorized agent, upon surrender of such Bond to the Paying Agent/Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Owner or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender for transfer of a Bond at the designated office of the Paying Agent/Registrar, there will be registered and delivered in the name of the designated transferee or transferees, one or more new Bonds, executed on behalf of, and furnished by, the Commission, of Authorized Denominations and having the same maturity and of a like aggregate principal amount as the Bond or Bonds surrendered for transfer.

At the option of the Owner, the Bonds may be exchanged for other Bonds of Authorized Denominations and having the same maturity, bearing the same rate of interest, and of like aggregate principal amount as the Bonds surrendered for exchange, upon surrender of the Bonds to be exchanged at the designated office of the Paying Agent/Registrar. Whenever any Bonds are surrendered for exchange, new Bonds will be registered and delivered, executed on behalf of, and furnished by, the Commission to the Owner requesting the exchange.

All Bonds issued upon any transfer or exchange of Bonds will be delivered at the designated office of the Paying Agent/Registrar or sent by United States Mail, first-class, postage prepaid to the Owners or the designee thereof, and, upon the registration and delivery thereof, the same will be the valid obligations of the Commission, evidencing the same debt, and entitled to the same benefits under the Resolution as the Bonds surrendered in such transfer or exchange.

All transfers or exchanges of Bonds pursuant to the Resolution will be made without expense or service charge to the Owner, except as otherwise provided in the Resolution, and except that the Paying Agent/Registrar will require payment by the Owner requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Bonds canceled by reason of an exchange or transfer are defined as “Predecessor Bonds,” evidencing all or a portion, as the case may be, of the same debt evidenced by the new Bond or Bonds registered and delivered in the exchange or transfer. Additionally, the term “Predecessor Bonds” includes any mutilated Bond that is surrendered to the Paying Agent/Registrar or any Bond for which satisfactory evidence of the loss of which has been received by the Commission and the Paying Agent/Registrar and, in either case, in lieu of which a Bond has or Bonds have been registered and delivered pursuant to the Resolution.

See APPENDIX E - “DESCRIPTION OF BOOK-ENTRY-ONLY SYSTEM AND GLOBAL CLEARANCE PROCEDURES” for a description of the system to be utilized initially in regard to the ownership and transferability of the Bonds.

### **Outstanding and Additional Senior Obligations and Tiers of Senior Obligations**

The Commission has previously issued five series of Senior Obligations as First Tier Senior Obligations in the aggregate principal amount of \$2,957,390,000, which were outstanding in the aggregate principal amount of \$2,687,655,000 (the “Previously Issued First Tier Senior Obligations”) as of July 1, 2010. In connection with the “Texas Transportation Commission State Highway Fund First Tier Revenue Bonds, Series 2006-B (Variable Rate Bonds),” the Commission entered

into a “Standby Bond Purchase Agreement” with Banco Bilbao Vizcaya Argentaria, S.A., acting through its New York Branch, as liquidity provider. The Commission’s obligation to make payments to such liquidity provider constitutes First Tier Senior Obligations under the Master Resolution secured by the Pledged Revenues on parity with the Previously Issued First Tier Senior Obligations, the Bonds and any additional First Tier Senior Obligations hereafter issued or incurred. See “INTRODUCTION” and “THE BONDS -Credit Agreements.”

In the Master Resolution, the Commission has reserved the right to issue or otherwise incur additional Senior Obligations for any purpose authorized by law, including the refunding of Senior Obligations, Subordinate Obligations, or other obligations of the Commission, pursuant to the provisions of the Master Resolution and any Supplemental Resolutions. The Commission has covenanted and agreed to comply with all constitutional and statutory requirements of State law and, to the extent applicable, federal law governing the issuance of Senior Obligations.

The Commission has also reserved the right to establish multiple Tiers with respect to Senior Obligations; provided, that no Outstanding Senior Obligation may be subrogated or made inferior to any other Senior Obligation unless such distinction is implemented through strict compliance with the provisions of the Master Resolution and any applicable Supplemental Resolution relating to any Outstanding Senior Obligation. Until such time as any distinction among Tiers of Senior Obligations is implemented in accordance with the terms of the Master Resolution, all Senior Obligations will be deemed and treated as First Tier Senior Obligations.

Subject to the applicable provisions of the Master Resolution, the Commission may from time to time issue, incur, assume, guarantee, or otherwise become liable in respect of Senior Obligations in accordance with the Master Resolution and a Supplemental Resolution providing for the issuance, execution and/or delivery of such Senior Obligations. Senior Obligations may be further secured by or made payable from any other source of payment lawfully available for such purpose.

Prior to the issuance, execution or delivery of any Senior Obligation under the Master Resolution, the Commission will provide:

- (i) A certified copy of the minute order or other official action of the Commission (A) approving a Supplemental Resolution establishing or providing the terms and provisions of such Senior Obligations, and (B) authorizing the issuance, execution and/or delivery of the Senior Obligations;
- (ii) An opinion or opinions of Bond Counsel to the effect that (A) issuance, execution and/or delivery of the Senior Obligations is permitted under the Master Resolution and any Supplemental Resolutions that authorized the issuance, execution and/or delivery of any then Outstanding Senior Obligations and (B) the Supplemental Resolution relating to such Senior Obligations has been duly authorized and such Senior Obligations when issued, executed and/or delivered will constitute valid, binding and enforceable limited obligations of the Commission, subject to bankruptcy, equitable principles and other standard legal opinion exceptions;
- (iii) An Officer’s Certificate to the effect that (A) the Commission is not in default under the Master Resolution or any Supplemental Resolution or, upon the issuance of such Senior Obligations, any existing default will be cured and (B) following the issuance of such Senior Obligations, the maximum Annual Debt Service Requirements with respect to all then Outstanding Senior Obligations will not exceed the Maximum Allowable Debt Service (defined below) in the current or any future year; and
- (iv) Such further documents, moneys and securities as are required by the provisions of the Supplemental Resolution providing for the issuance, execution and/or delivery of such Senior Obligations.

“Maximum Allowable Debt Service” means: (a) with respect to First Tier Senior Obligations, an amount that is equal to twenty-five percent (25%) of the State Highway Fund Revenues in (i) the immediately preceding Fiscal Year or (ii) any period of twelve (12) consecutive months that begins no more than eighteen (18) months before the date on which Senior Obligations are to be issued or effective, as determined by a Designated Financial Officer; and (b) with respect to other Tiers, such amount as shall be established by the Commission at the time Senior Obligations of such Tier are initially issued or otherwise incurred.

In determining the amount of State Highway Fund Revenues during any twelve (12) month period, such amount may be adjusted to reflect any increase in State Highway Fund Revenues that a Designated Financial Officer certifies is expected to

result from any adjustment to the amounts dedicated or appropriated to the Fund which is placed into effect following the commencement of such period as if such adjustment had been in effect for the entire twelve (12) month period.

In making any determination under the Master Resolution regarding the principal amount of Obligations being issued and incurred or then Outstanding, Credit Agreements will be deemed to have no principal amount to the extent that such agreement relates to an Obligation that has already been considered in making such determination.

In connection with the issuance of Senior Obligations to refund Outstanding Senior Obligations of the same or higher Tier, the Commission may provide, in lieu of the certification required by clause (iii)(B) above, an Officer's Certificate to the effect that, following the issuance of such Senior Obligations, the Annual Debt Service Requirements will not exceed one hundred ten percent (110%) of the Annual Debt Service Requirements in effect prior to the issuance of such Senior Obligations; provided, however, that such certification does not need to address the Annual Debt Service Requirements for Fiscal Years in which no Senior Obligations (other than the Senior Obligations then being issued) will be Outstanding. See APPENDIX A - "DEFINITIONS AND EXCERPTED PROVISIONS OF THE RESOLUTION."

In addition to the Maximum Allowable Debt Service requirement set forth in the Resolution, the Act currently provides that Obligations may not have a principal amount or terms that, at the time such Obligations are entered into, are expected by the Commission to cause annual expenditures with respect to all outstanding Obligations to exceed 10 percent of the amount deposited to the credit of the Fund in the immediately preceding year. The Texas Legislature may amend the Act and change such requirement at any time; however, the terms of the Resolution (including the definition of Maximum Allowable Debt Service) may only be changed in accordance with the provisions of the Resolution.

### **Credit Agreements**

To the extent permitted by law, the Commission may authorize the execution and delivery of one or more Credit Agreements upon (i) delivery of an Officer's Certificate to the effect that the Credit Agreement is in the best interest of the Commission and (ii) compliance with the requirements described under the subcaption "Outstanding and Additional Senior Obligations and Tiers of Senior Obligations" above, if the Credit Agreement is to constitute a Senior Obligation in whole or in part (as specified in the Credit Agreement).

A Credit Agreement and the Costs thereof may constitute, in whole or in part, a (i) Senior Obligation of the same or lower Tier as the Tier of the Senior Obligation to which such agreement relates payable from and secured by a pledge of the Pledged Revenues on parity with other Senior Obligations of such Tier or (ii) Subordinate Obligation payable from or secured by a pledge of State Highway Fund Revenues (or any portion thereof) subordinate to the Senior Obligations.

In connection with the "Texas Transportation Commission State Highway Fund First Tier Revenue Bonds, Series 2006-B (Variable Rate Bonds)," (the "Series 2006-B Bonds"), the Commission entered into a "Standby Bond Purchase Agreement", dated as of November 1, 2006 (the "Series 2006-B Liquidity Facility"), with Banco Bilbao Vizcaya Argentaria, S.A., acting through its New York Branch, as liquidity provider (the "Series 2006-B Liquidity Facility Issuer") to provide liquidity for the Series 2006-B Bonds which provides for the purchase, in accordance with the terms thereof, of the Series 2006-B Bonds that bear interest at a daily rate or a weekly rate and that are tendered for purchase but not remarketed by the remarketing agent. The Commission's obligation to make payments to the Series 2006-B Liquidity Facility Issuer under the Series 2006-B Liquidity Facility constitutes First Tier Senior Obligations under the Master Resolution secured by the Pledged Revenues on parity with the Previously Issued First Tier Senior Obligations, the Bonds and any additional First Tier Senior Obligations issued or incurred hereafter. The Series 2006-B Liquidity Facility is scheduled to expire on November 7, 2016.

### **Issuance of Subordinate Obligations**

In 2005, the Commission authorized the issuance of State Highway Fund Revenue Commercial Paper Notes, Series A (the "Notes") in the maximum authorized amount of \$500 million. The Department intends to issue Notes, from time to time, to facilitate efficient cash management operations in the State Highway Fund in response to fluctuations in the cash balance of the State Highway Fund as a result of the cyclical nature and uncertain timing of deposits into and payments out of the State Highway Fund. As of June 30, 2010, \$65,000,000 of Notes were outstanding.

In connection with the Notes, the Commission entered into a Revolving Credit Agreement, dated as of August 1, 2009 (the "Note Liquidity Agreement"), with Bank of America, N.A., State Street Bank and Trust Company and JPMorgan Chase Bank, National Association to provide liquidity for the Notes in the event the remarketing agents are unable to market or remarket the Notes. Although the Notes are payable from the Fund, the payment obligation with respect to the Notes and the

Note Liquidity Agreement is subordinate to the Bonds and all other Senior Obligations, which have a prior lien pledge of the revenues deposited into the Fund. The Note Liquidity Agreement is scheduled to expire on August 19, 2011.

The Commission may also issue or otherwise incur additional Subordinate Obligations for any lawful purpose in such amounts (without limitation), on such dates and having such terms as the Commission may determine. No holder of any Subordinate Obligation, or party to a transaction relating to any Subordinate Obligation, will be entitled to claim any right or benefit under the Master Resolution by virtue of the ownership of or interest in such Subordinate Obligation except after provision has been made for the payment of all Senior Obligations in the manner set forth in the Master Resolution. The Master Resolution does not limit the right of the Commission and the Department to issue or otherwise incur Subordinate Obligations in such number of tiers and levels of payment priority as may be determined by the Commission and the Department. See "THE STATE HIGHWAY FUND - Subordinate Obligations."

### **Bondowners' Remedies**

In the event of a default in the payment of any Cost of any Senior Obligation (including the Bonds) or a default in the performance of any duty or covenant provided by law or in the Master Resolution, the owners of the Bonds may pursue all legal remedies afforded by State law to compel the Commission and the Department to remedy such default and to prevent further default or defaults. Without in any way limiting the generality of the foregoing, it is expressly provided in the Resolution that any owner of the Bonds may (at law or in equity), by suit, action, mandamus, or other proceedings, enforce and compel performance of all duties required to be performed by the Commission and the Department under the Master Resolution.

The Master Resolution does not establish other remedies or specifically enumerate events of default with respect to any Obligations, including the Bonds. The Master Resolution does not provide for a trustee to enforce the covenants and obligations of the Commission and the Department. In no event will owners of the Bonds have the right to have the maturity of the Bonds accelerated as a remedy in the event of a payment default by the Commission. The enforcement of the remedy of mandamus may be difficult, time consuming or unavailable. No assurance can be given that a mandamus or other legal action to enforce a default under the Master Resolution would be successful.

The statutory authority to enter into a contract (such as a bond) has been consistently construed by Texas state courts to be a legislative waiver of immunity from liability for breach of the contract; however, a State agency would need specific constitutional or legislative authority to waive immunity from suit. Under current State law, the Commission is not authorized to waive sovereign immunity from suit with respect to the Bonds and the owners thereof are prevented from bringing a suit against the Commission to adjudicate a claim to enforce the Bonds or for damages for breach of the Bonds. However, State courts have held that mandamus proceedings against a governmental unit, such as the Commission, to compel performance of a duty prescribed by law, are not prohibited by sovereign immunity.

### **BOOK-ENTRY-ONLY SYSTEM**

In reading this Official Statement it should be understood that while the Bonds are in the book-entry-only system, references in other sections of this Official Statement to registered owners should be read to include the person for which the Direct Participant or Indirect Participant acquires an interest in the Bonds, but (i) all rights of ownership must be exercised through DTC and the book-entry-only system, and (ii) except as described above, notices that are to be given to registered owners under the Resolution will be given only to DTC. See APPENDIX E - "DESCRIPTION OF BOOK-ENTRY-ONLY SYSTEM AND GLOBAL CLEARANCE PROCEDURES."

### **DESCRIPTION OF THE TRANSACTION DOCUMENTS**

#### **Selected Definitions**

Capitalized terms used in this Official Statement have the same meanings assigned to such terms in the Resolution, as set forth in APPENDIX A - "DEFINITIONS AND EXCERPTED PROVISIONS OF THE RESOLUTION," except as otherwise indicated herein. A reference to any of these terms in the singular number shall include the plural and vice versa.

#### **The Resolution**

The Bonds are being issued pursuant to a Second Amended and Restated Master Resolution adopted by minute order of the Commission; the Fifth Supplemental Resolution adopted by minute order of the Commission on February 25, 2010; and

an Award Certificate of Department Representative executed on July 27, 2010. The Fifth Supplemental Resolution authorizes the issuance of bonds in one or more series in an aggregate principal amount not to exceed \$2.9 billion; provided that not more than \$1.5 billion of bonds may be issued in any fiscal year. In addition, the Fifth Supplement authorizes the issuance of additional First Tier Senior Obligations for the purpose of refunding previously issued First Tier Senior Obligations in the event that certain savings criteria are satisfied. The Bonds constitute the first installment of obligations delivered under authority of the Fifth Supplemental Resolution. Excerpts of certain selected provisions from the Master Resolution and the Fifth Supplemental Resolution are contained in APPENDIX A – “DEFINITIONS AND EXCERPTED PROVISIONS OF THE RESOLUTION.” The excerpted provisions in APPENDIX A do not purport to be comprehensive or definitive and are qualified in their entirety by reference to the Resolution. Copies of the Master Resolution and the Fifth Supplemental Resolution are available for examination at the offices of the Department.

### **The Funds Management Agreement**

The Commission and the Comptroller of Public Accounts of the State (the “Comptroller”) have entered into a Funds Management Agreement with respect to the Bonds. The following is a summary of certain provisions of the Funds Management Agreement providing for the administration of the proceeds of the Bonds and the availability of funds for the payment thereof. This summary does not purport to be comprehensive or definitive and is qualified in its entirety by reference to the Funds Management Agreement. Copies of the Funds Management Agreement are available for examination at the offices of the Department.

***Establishment of Funds.*** The Comptroller has established and will administer the following funds with respect to the Bonds: the Fund, the Proceeds Fund and the Rebate Fund, if any (collectively, the “Administered Funds”).

***Deposit of Purchase Price.*** The Funds Management Agreement provides that the purchase price of the Bonds will be deposited as follows: (i) the amount received as accrued interest on the Bonds, if any, will be deposited into the First Tier Senior Obligation Debt Service Fund and (ii) all remaining proceeds will be deposited to the Proceeds Fund for the Bonds to pay costs of State highway improvement projects (including the cost of issuance of the Bonds), as directed by a Department Representative.

***Transfers and Remittances.*** The Commission will cause vouchers to be processed through the Uniform Statewide Accounting System (“USAS”) for the payment of costs of issuance from the Proceeds Fund. To remit money in the Proceeds Fund or any other accounts and subaccounts within the Fund to any person’s account, the Commission will cause a voucher to be processed through the USAS. To transfer funds between the accounts and subaccounts within the Fund and between the Fund and other funds of the Commission, the Department staff will initiate transactions in the USAS.

***Administration of Proceeds Fund.*** Moneys and investments deposited in the Proceeds Fund will be applied to pay costs of issuance of the Bonds and to fund State highway improvement projects in accordance with the Resolution, as directed by a Department Representative. Pending disbursement for authorized purposes, amounts credited to the Proceeds Fund will be held and invested in the manner provided by the Resolution and the Funds Management Agreement. Money on deposit in the Proceeds Fund that represents investment earnings will be either (i) retained in the Proceeds Fund and used to fund State highway improvement projects or (ii) transferred to the First Tier Senior Obligation Debt Service Fund and used to pay debt service on the Bonds, as directed by a Department Representative.

***Administration of State Highway Fund; Payment Provisions.*** The Commission will administer the Fund in accordance with State law and will deposit, or cause to be deposited, all State Highway Fund Revenues in the Fund in a timely manner. With respect to Senior Obligations, on or before each Payment Date, the Commission will cause a voucher to be drawn on the Fund and will transfer, or cause there to be transferred, immediately available money to each Fiscal Agent that is serving as a paying agent for Senior Obligations or any other Fiscal Agent or Secured Owner that is entitled to payment directly from the Comptroller, as applicable (each, a “Payee”), in an amount sufficient for the payment of such Senior Obligations and otherwise in accordance with any instructions of such Payee. See “THE BONDS – General” and “THE BONDS – Payment of the Bonds.”

If on any date the Comptroller and the Commission determine that (i) State Highway Fund Revenues are required to be transmitted to any Payee and (ii) the Fund does not contain sufficient revenues for such purpose, the Commission shall direct the Comptroller to transfer State Highway Fund Revenues in accordance with Section 49-n and the Act to each Payee as such revenues are deposited in the Fund and the Commission shall refrain from directing any further withdrawals or disbursements from the Fund until amounts equivalent to such deficiency have been received in the Fund and transferred to each Payee so that each such deficiency has been fully restored and all costs owed with respect to such deficiency have been

paid in full, to the extent such costs are then due. Such transfer(s) will be made to each Payee in the order of priority based on the respective Tiers of the affected Senior Obligations, as and when sufficient State Highway Fund Revenues are available for such purpose, as provided in the Master Resolution.

***Investment of Administered Funds by Comptroller.*** Money held by the Comptroller in the Administered Funds will be invested (and reinvested) by the Comptroller in Permitted Investments selected by the Comptroller. See “THE STATE HIGHWAY FUND - Investment Authority and Investment Practices for the Fund.” Uninvested money (if any) in any Administered Fund will be secured in the manner and to the extent required by law. The investments of each Administered Fund will be made under conditions that will timely provide money sufficient to meet the Commission’s obligations. Except as otherwise required by the Resolution and the Funds Management Agreement, the proceeds received from the disposition of any investment acquired with money from any Administered Fund, and any income received from any such investment, will be deposited into such Administered Fund.

The Comptroller will maintain (or cause to be maintained) detailed records accurately reflecting all investment transactions and all activity in Administered Funds held by the Comptroller, which records are subject to State audit. With respect to each purchase (except any direct purchase from the United States government) or sale of an investment, the Comptroller has represented and warranted that the price for which the investment will be purchased or sold will be the “fair market value” determined in accordance with treasury regulations and that the Comptroller will maintain records that adequately support such determination.

***Investment Losses.*** Any losses from investment of any Administered Funds held by the Comptroller will be charged on a pro rata basis among the Administered Funds subject to the Funds Management Agreement and other sources of money from which such investment was made. The Comptroller will not be held liable for any losses resulting from investments made in accordance with the Funds Management Agreement.

## **THE STATE HIGHWAY FUND**

### **General**

The Fund is the general source for a substantial portion of funding for the State Highway System, the Department, and the administration of State laws relating to traffic and safety on public roads. The Fund receives revenue from a variety of sources, including, without limitation, certain federal transportation program funds received from the United States Department of Transportation (“USDOT”), State motor fuels tax funds, State motor vehicle registration funds, and State motor lubricants tax funds. See “Sources of Revenue in the Fund” below.

Pursuant to Article VIII, Section 7-a of the Texas Constitution, (i) 75% of the net revenues generated from the State motor fuels tax (net of enforcement, administrative and refund charges), (ii) the State tax on motor lubricants, and (iii) the net revenues generated from the State motor vehicle registration fees (net of collection charges and the portion of such fees that is reserved for counties within the State) are dedicated for acquiring rights-of-way; constructing, maintaining, and policing public roadways; and for the administration of laws pertaining to the supervision of traffic and safety on such roads. Also, pursuant to Article VIII, Section 7-b of the Texas Constitution, all revenues received from the federal government as reimbursement for State expenditures of funds that are themselves dedicated for acquiring rights-of-way and constructing, maintaining and policing public roadways are also constitutionally dedicated and may be used only for those purposes.

The Fund is the general operating fund of the Department through which, generally, all revenues dedicated or appropriated to the purposes of the Department are deposited and all of the Department’s administration, maintenance and operating expenses are paid. In addition, certain expenses of the Texas Mobility Fund are processed through the Fund, whereby the Texas Mobility Fund transfers amounts for such expenses to the Fund prior to such expenses being paid (except in situations where the Texas Mobility Fund is reimbursing the Fund for expenses incurred by the Fund). The Department’s ongoing “pay as you go” construction program is also paid from the Fund. Such expenses include payroll, repairs and maintenance, costs of materials and supplies, professional fees or commitments, utilities, rent and lease payments and intergovernmental payments. With the exception of certain Excluded Amounts, amounts deposited into the Fund are pledged to secure payment of the Bonds, the Previously Issued First Tier Senior Obligations and any additional Senior Obligations to be issued or otherwise incurred, and such amounts may also be used to pay debt service on and other costs associated with Subordinate Obligations, which includes non-debt obligations and commitments issued or incurred by the Commission or the Department. To accomplish all of these purposes, money in the Fund is appropriated by the Legislature to the Department, the Texas Department of Public Safety (the “DPS”) and certain other agencies of the State. For the 2006 - 2007 biennium, approximately 91.83% of the money appropriated from the Fund was appropriated for Department uses. For the 2008 - 2009

biennium, approximately 92.07% of the money appropriated from the Fund was appropriated for Department uses. For the 2010 - 2011 biennium, approximately 93.70% of the money appropriated from the Fund is appropriated for Department uses. See "THE BONDS - Source of Payment for Bonds," "- Outstanding and Additional Senior Obligations and Tiers of Senior Obligations," "- Issuance of Subordinate Obligations," "DESCRIPTION OF THE TRANSACTION DOCUMENTS," "THE STATE HIGHWAY FUND - Table 2 - State Highway Fund Unaudited Statement of Revenues, Expenditures and Changes in Fund Balance," "- Table 8 - Other State Revenues Deposited to the State Highway Fund," "-Table 12 - Appropriations to the Department from the State Highway Fund," "- Uses of the Fund - Capital Projects and Proposed Debt Financing," "- Subordinate Obligations," "INVESTMENT CONSIDERATIONS - Appropriations from the Fund" and APPENDIX A - "DEFINITIONS AND EXCERPTED PROVISIONS OF THE RESOLUTION."

In the past six years, the Commission has implemented a policy designed to accelerate the development and construction of public highways by using available funds to deliver such projects as quickly as possible. A recognized result of this policy is that the balance of the Fund, at fiscal year end, will be a nominal or negative amount, as the Commission utilizes available funds for development and construction of projects. The Commission and the Department believe the Fund, on a cash flow basis, has the resources necessary, including authority to issue certain obligations for cash flow management purposes, to meet all of the Fund's obligations. See "THE STATE HIGHWAY FUND - Subordinate Obligations."

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**Table 2**  
**State Highway Fund**  
**Unaudited Statement of Revenue, Expenditures and Changes in Fund Balance<sup>(1)</sup>**

	Fiscal years ended August 31,				
	2009	2008	2007	2006	2005
<b>REVENUES:</b>					
Taxes	\$ 39,631,000	\$ 38,908,025	\$ 36,826,897	\$ 34,887,444	\$ 33,004,285
Federal Revenues	2,667,476,975	2,718,120,986	1,941,088,023 <sup>(2)</sup>	2,899,921,273 <sup>(2)</sup>	3,339,677,113
Federal Pass Through Revenues	1,496,510	41,087,112	52,520,146	45,384,847	35,113,785
State Pass Through Revenues	-----	2,831	-----	-----	-----
Licenses, Fees and Permits	1,255,425,482	1,127,884,318	1,067,910,734	994,382,840	911,720,306
Interest & Investment Income <sup>(3)</sup>	89,868,109	132,205,641	82,948,919	46,640,015	11,568,206
Land Income	14,151,673	5,910,119	4,010,886	3,727,301	3,096,167
Settlement of Claims <sup>(4)</sup>	1,530,671	919,661	222,506	9,705	18,147,425
Sales of Goods and Services	242,997,226	287,201,307	242,385,443	215,287,020	285,211,677
Other Revenues	3,487,854	7,526,729	17,420,596	4,229,776	2,039,513
<b>TOTAL REVENUES</b>	<b>\$ 4,316,065,500</b>	<b>\$ 4,359,766,729</b>	<b>\$ 3,445,334,150</b>	<b>\$ 4,244,470,221</b>	<b>\$ 4,639,578,477</b>
<b>EXPENDITURES:</b>					
Salaries and Wages	\$ 631,841,865	\$ 633,374,602	\$ 631,683,100	\$ 602,105,271	\$ 561,304,081
Payroll Related Costs	214,421,433	218,626,741	218,626,564	209,883,025	193,748,668
Professional Fees and Services	285,999,868	342,550,241	526,313,527	446,387,853	393,589,686
Travel	4,004,156	5,779,485	6,860,450	7,309,542	6,369,697
Materials and Supplies	272,182,628	289,842,834	272,973,985	277,860,234	236,834,049
Communications and Utilities	53,742,544	56,619,750	57,275,932	54,530,970	45,866,002
Repairs and Maintenance	1,043,226,001	1,598,802,587	1,435,220,131	1,849,064,608 <sup>(5)</sup>	1,332,871,838
Rentals and Leases	12,060,836	12,437,437	13,303,082	13,026,431	12,179,731
Printing and Reproduction	5,993,863	6,906,695	10,010,702	7,763,054	6,959,665
Claims and Judgments	10,094,356	23,954,277	10,945,250	13,348,619	5,798,397
Federal Pass Through Expenditures	8,341,187	7,659,646	25,235,634	18,181,059	7,684,539
State Grant Pass Through Expenditures	1,799,550	6,793,159	27,010,311	25,706,999	25,348,545
Intergovernmental Payments	629,237,110	322,839,016	137,279,930	141,436,929	178,449,515
Public Assistance Payments	15,834,123	93,898,672	108,859,769	100,032,500	85,799,092
Other Expenditures	191,786,457	159,603,444	191,927,381	154,541,396	156,891,264
Principal on State (Highway Fund) Bonds	205,000	-----	20,810,000	-----	-----
Interest on State (Highway Fund) Bonds	66,941,288	62,687,930	65,490,391	9,765,714	-----
Other Financing Fees	3,137,921	6,326,194	884,305	460,320	465,241
Capital Outlay	3,269,002,730	4,225,709,468	4,162,953,911	3,751,696,736	3,512,164,586
<b>TOTAL EXPENDITURES</b>	<b>\$ 6,719,852,916</b>	<b>\$ 8,074,412,178</b>	<b>\$ 7,923,664,355</b>	<b>\$ 7,683,101,260</b>	<b>\$ 6,762,324,596</b>
<b>EXCESS (DEFICIT) OF REVENUES OVER (UNDER) EXPENDITURES</b>	<b>\$ (2,403,787,416)</b>	<b>\$ (3,714,645,449)</b>	<b>\$ (4,478,330,205)</b>	<b>\$ (3,438,631,039)</b>	<b>\$ (2,122,746,119)</b>
<b>OTHER FINANCING SOURCES (USES):</b>					
Operating Transfers In <sup>(6)</sup>	\$ 2,826,404,826	\$ 3,676,384,148	\$ 4,020,921,157	\$ 3,495,973,968	\$ 2,491,995,873
Operating Transfers Out	(1,114,091,280)	(760,134,861)	(757,386,425)	(893,280,581)	(575,093,100)
Bond & Note Issued	16,000,000	1,481,990,774	952,550,000	600,000,000	-----
Net Change in Consumable Inventories	-----	-----	-----	-----	-----
Insurance Recoveries <sup>(4)</sup>	13,828,826	11,475,670	719,463	6,457,677	-----
Sale of Capital Assets	5,084,641	5,290,615	4,405,583	4,313,640	10,553,783
<b>TOTAL OTHER FINANCING SOURCES (USES)</b>	<b>\$ 1,747,227,013</b>	<b>\$ 4,415,006,316</b>	<b>\$ 4,221,209,778</b>	<b>\$ 3,213,464,704</b>	<b>\$ 1,927,456,556</b>
<b>NET CHANGE IN FUND BALANCES</b>	<b>\$ (656,560,403)</b>	<b>\$ 700,360,867</b>	<b>\$ (257,120,427)</b>	<b>\$ (225,166,335)</b>	<b>\$ (195,289,563)</b>
<b>FINANCIAL STATEMENT-FUND BALANCES</b>					
<b>BEGINNING FUND BALANCES</b>	<b>\$ 382,654,785</b>	<b>\$ (317,706,082)</b>	<b>\$ (60,585,655)</b>	<b>\$ 164,580,680</b>	<b>\$ 359,870,243</b>
Restatements	54,450,265	-----	-----	-----	-----
<b>BEGINNING FUND BALANCES, Restated</b>	<b>437,105,050</b>	<b>(317,706,082)</b>	<b>(60,585,655)</b>	<b>164,580,680</b>	<b>359,870,243</b>
<b>ENDING FUND BALANCES</b>	<b>\$ (219,455,353)<sup>(7)</sup></b>	<b>\$ 382,654,785</b>	<b>\$ (317,706,082)<sup>(7)</sup></b>	<b>\$ (60,585,655)<sup>(7)</sup></b>	<b>\$ 164,580,680<sup>(7)</sup></b>

(1) The unaudited statements are prepared by the Department and are presented using a modified accrual basis of accounting. See APPENDIX B - "Excerpts From Unaudited Department Financial Statements for Fiscal Year ended August 31, 2009.

(2) The decrease from prior fiscal year reflects a decrease primarily due to lower than expected reimbursements because of delays in project advancements and, to a lesser extent, the effects of decreased tapered match reimbursements from the federal government. See Footnote 6 below, "THE STATE HIGHWAY FUND - General" and "- Uses of the Fund - Capital Projects and Proposed Debt Financings."

(3) Includes \$28,150,345 of premium received from the sale of bonds for fiscal year 2006, \$48,129,769 of premium received from the sale of bonds for the fiscal year 2007, and \$68,095,924 of premium received from the sale of bonds for fiscal year 2008.

(4) For fiscal year 2006, Settlement of Claims was split into two categories: Settlement of Claims and Insurance Recoveries.

(5) Increases due in part to availability of proceeds of bonds and transfers from the Texas Mobility Fund.

(6) Transfers are State motor fuel tax revenues and transfers from the Texas Mobility Fund.

(7) See discussion of the Fund's fund balance in "THE STATE HIGHWAY FUND - General."

## Sources of Revenue in the Fund

The following Tables 3, 4, 6, 8 and 9 are presented using a cash basis of accounting and will not reconcile to the foregoing Table 2, which is presented using a modified accrual basis of accounting.

The following table sets out the amount of total State Highway Fund Revenues, which are derived from each of the following sources for the fiscal years 2005 through 2009: State motor fuels tax, State motor vehicle registration fees, other State revenue sources, and reimbursements from federal funds.

**Table 3**  
**State Highway Fund Revenues By Source<sup>(1)</sup>**  
**(In Millions)**

Fiscal Year	State Motor Fuels Tax	State Motor Vehicle Registration Fees	Other State Revenue Sources <sup>(2)</sup>	Reimbursements from Federal Funds	Total Revenues
2005	\$ 2,148.3	\$ 873.9	\$ 367.1	\$ 3,284.9	\$ 6,674.2
2006	2,194.2	932.7	527.5	3,139.5	6,793.9
2007	2,238.2	984.2	457.2	2,026.1 <sup>(3)</sup>	5,705.7
2008	2,275.9	1,024.1	463.9	2,727.6	6,491.5
2009	2,226.6	1,066.2	491.1	2,666.6	6,450.5

<sup>(1)</sup> Presented on a cash basis of accounting.

<sup>(2)</sup> See Footnote 2 to Table 8 - "Other State Revenues Deposited to the State Highway Fund."

<sup>(3)</sup> Reflects a decrease from prior years primarily due to lower than expected reimbursements because of delays in project advancements and, to a lesser extent, the effects of decreased tapered match reimbursements from the federal government. For an explanation in the decline in reimbursements from federal funds, see "Sources of Revenue in the Fund - Federal Funds" herein.

**State Motor Fuels Tax.** The State currently levies a motor fuels tax of \$0.20 per gallon on gasoline and diesel fuel, and \$0.15 per gallon on liquefied natural gas. Sales of motor fuels for the exclusive use of the federal government or a public school district in the State are exempt, and sales of liquefied gas for the exclusive use of the federal government, local county government or a public school district in the State are exempt. The Comptroller retains 1% of the gross receipts for administration and enforcement, and after providing for refunds or non-highway use collections, distributes the remainder as hereinafter described. Pursuant to Article VIII, Section 7-a of the Texas Constitution, 75% of the net revenues generated from the State motor fuels tax (net of enforcement, administrative and refund charges) are deposited to the credit of the Fund and the remaining 25% of such revenues are deposited to the credit of the "Available School Fund" in support of the State's primary and secondary schools. The following table sets out the amount of the State motor fuels tax deposited into the Fund for the fiscal years 2005 through 2009 and the approximate percentage of total Fund revenues for such years that constituted State motor fuels taxes.

**Table 4**  
**State Motor Fuels Tax Revenues Deposited to the State Highway Fund<sup>(1)</sup>**  
**(In Millions)**

Year	Amount of Motor Fuels Tax Revenues Deposited	Percentage of Total Fund Revenues
2005	\$ 2,148.3	32 %
2006	2,194.2	32
2007	2,238.2	39
2008	2,275.9	35
2009	2,226.6	34

<sup>(1)</sup> Presented using a cash basis of accounting.

The State motor fuels tax on gasoline and diesel fuel is imposed (i) upon the removal of fuel from a storage and distribution facility through a rack mechanism to a transport vehicle, railcar or other transfer means outside the bulk transfer/terminal system (no tax is imposed on qualified bulk transfers); (ii) upon the importation of fuel into the State for delivery in the State, other than by qualified bulk transfer; (iii) upon the sale or bulk transfer of fuel to a non-licensed party; (iv) upon fuel brought into the State in fuel supply tanks of an interstate trucker; and (v) upon the fuel used in the blending of fuel not in the bulk transfer/terminal system. The tax is due to the Comptroller on or before the 25th day of the month following a calendar month (except the tax from interstate truckers which is due after each calendar quarter). Certain taxpayers are entitled to retain 1.75% of the tax they pay to cover administrative expenses.

The State motor fuels tax on liquefied gas is imposed upon the user of the vehicle using such fuel and is prepaid to the Comptroller by the purchase on an annual liquefied gas license based on the weight of the vehicle and anticipated annual mileage.

The Comptroller is required to remit 75% of the net State motor fuels tax revenues (net of enforcement, administrative and refund charges) to the credit of the Fund on or before the fifth business day of each month, provided that \$7.3 million of the taxes related to gasoline are used annually to fund the county and road district highway fund, administered by the Comptroller outside of the Fund.

The following table sets out the amount of the taxable gasoline and diesel fuel consumption in the State for the fiscal years 2005 through 2009.

**Table 5**  
**Taxable Gasoline and Diesel Fuel Consumption in Texas**  
**(In Millions of Gallons)**

Fiscal Year	Gasoline	Diesel
2005	11,285.5	3,463.3
2006	11,300.8	3,658.2
2007	11,624.8	3,886.9
2008	11,765.6	3,968.9
2009	11,730.4	3,805.1

**State Motor Vehicle Registration Fees.** The State currently charges motor vehicle registration fees under a number of statutory provisions. The Texas Department of Motor Vehicles (“TxDMV”) shares motor vehicle registration responsibilities with county governments that assist with this function. Revenues from vehicle registrations are shared between the Fund and the counties. Table 6 below sets out the amount of such revenues deposited to the Fund for the fiscal years 2005 through 2009, the approximate percentage of total motor vehicle registration fee revenues represented by such amount, and the approximate percentage of total Fund revenues for such years that constituted motor vehicle registration fees.

Section 502.1725 of the Texas Transportation Code (“Section 502.1725”) authorizes the commissioners court of certain counties to impose an additional fee, not to exceed \$10, for registering a vehicle in the county. Section 502.1725 requires either the county assessor-collector or the Department to collect the additional fee, as appropriate, and to send the fee revenue to the regional mobility authority of the county to fund long-term transportation projects in the county. Counties that have elected to impose this fee may remove the fee by rescinding the order imposing the fee and notifying the Department of such rescission. Section 502.1725 applies only to a county that borders the United Mexican States, that has a population of more than 300,000, and in which the largest municipality has a population of less than 300,000.

House Bill 3097 passed during the 81st Session of the Texas Legislature created TxDMV from the Department, which became operational on November 1, 2009. The TxDMV will be responsible for the following duties: vehicle registration and titling, issuing motor carrier operating authority, motor carrier enforcement, licensing vehicle dealers and awarding law enforcement agencies grants to reduce auto theft and increase public awareness.

**Table 6**  
**State Motor Vehicle Registration Fees Deposited to the State Highway Fund<sup>(1)</sup>**  
**(In Millions)**

Fiscal Year	Amount of Motor Vehicle Registration Fees Deposited	Percentage of Total Motor Vehicle Registration Fees	Percentage of Total Fund Revenues
2005	\$ 873.9	67 %	13 %
2006	932.7	68	14
2007	984.2	69	17
2008	1,024.1	69	16
2009	1,066.2	71	17

<sup>(1)</sup> Presented using a cash basis of accounting.

Every owner of a motor vehicle, unless otherwise exempted, is required to register such vehicle each year the vehicle is used or is to be used on the public roads of the State. Registration fees are collected by the tax collector of the county in which the owner of a vehicle resides. The fees vary dependent on the type and age of vehicle. The collecting county annually retains 100% of such fees collected up to an amount equal to: (i) \$60,000, plus (ii) \$350 for each mile of county road maintained by such county, not to exceed 500 miles, plus (iii) in fiscal year 2008, 70% of an amount equal to five percent of the previous calendar year motor vehicle sales tax and penalties collected in that county (the amount reflected in clause (iii) is further reduced proportionately each fiscal year until the amount is zero in fiscal year 2015 and succeeding years). After such amount is retained by the county, the collecting county then shall retain an additional amount equal to 50% of State vehicle registration fees collected until the amount retained for the calendar year equals \$125,000 and the remaining 50% (i.e., \$125,000) shall be deposited to the credit of the Fund. After this second amount of \$125,000 is retained by the collecting county, 100% of State vehicle registration fees is to be remitted to the credit of the Fund. Counties are also authorized to impose an additional road and bridge fee, not to exceed \$10, for registering a vehicle in the county, and three percent of such fee is to be remitted to the credit of the Fund.

The following table sets out the number of vehicles registered in the State for the fiscal years 2005 through 2009.

**Table 7**  
**Vehicles Registered in Texas**  
**(In Thousands)**

Fiscal Year	Number of Vehicles
2005	19,150
2006	20,084
2007	20,902
2008	21,171
2009	21,432

**Other State Revenue Sources.** The State also generates or receives funds from a variety of sources that are deposited to the credit of the Fund. Such sources of funds include, without limitation, sales taxes on motor lubricants, funds from local governments that are participating in State highway projects, interest earnings on the dedicated funds deposited to the credit of the Fund, surplus equipment sales revenues, oversize and overweight trailer permit fees, vehicle title certificate fees, revenues from Texas Highways magazine, and other reimbursements received by the Department. With the exception of the sales tax on motor lubricants and interest earnings on Dedicated Taxes, Dedicated Federal Revenues and Dedicated Registration Fees, these other revenue sources are not dedicated or committed by constitutional provision to the State Highway Fund. See “INVESTMENT CONSIDERATIONS - Potential Legislative Changes to Pledged Revenues.” The following table sets out the aggregate amount of funds generated from these sources and deposited to the Fund for the fiscal years 2005 through 2009 and the approximate percentage of the total Fund revenues for such years generated from such sources.

**Table 8**  
**Other State Revenues Deposited to the State Highway Fund<sup>(1)</sup>**  
**(In Millions)**

Fiscal Year	Amount Deposited	Percentage of Total Fund Receipts
2005	\$ 367.1 <sup>(2)</sup>	6 %
2006	527.5 <sup>(2)(3)</sup>	8
2007	457.2 <sup>(2)</sup>	8
2008	463.9 <sup>(2)</sup>	7
2009	491.1 <sup>(2)</sup>	8

(1) Presented on a cash basis of accounting. Excludes loan repayments received by the State Infrastructure Bank (“SIB”).

(2) Excludes approximately \$330 million, \$1.115 billion, \$1.84 billion, \$1.28 billion and \$646 million in Fiscal Years 2005 through 2009, respectively, deposited into the Fund from the Texas Mobility Fund for payment to contractors. For administrative purposes, expenses of the Texas Mobility Fund are processed through the State Highway Fund, whereby the Texas Mobility Fund transfers amounts for such expenses to the State Highway Fund prior to such expenses being paid.

(3) Excludes \$100 million received from Harris County Toll Road Authority as its local contribution for a construction project in fiscal year 2006.

**Federal Funds.** Federal transportation funds are currently made available to the State by the federal government. Briefly, the Federal-Aid Highway Program (“FAHP”) is an “umbrella” term that encompasses most of the federal programs providing highway funds to the states. The multi-year authorization, the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users” (“SAFETEA-LU”), became law on August 10, 2005 and expired on September 30, 2009. SAFETEA-LU also extends the imposition of highway-user taxes, generally at the rates imposed by prior federal law, through September 30, 2011. The Federal Highway Administration (“FHWA”) is the federal agency within the USDOT responsible for administering the FAHP. The FAHP is financed from the transportation user-related revenues deposited in the Federal Highway Trust Fund (“HTF”). The primary source of revenues in the HTF is derived from the federal excise taxes on motor fuels, including certain alternative fuels. Other taxes include excise taxes on tires, trucks and trailers, and truck use taxes. For a more complete description of the FAHP, the HTF and SAFETEA-LU, see APPENDIX C - “INFORMATION CONCERNING THE FUNDING OF FEDERAL-AID HIGHWAYS.”

The FAHP is a reimbursement program. Funding under the FAHP is provided to states through a multi-step funding cycle that includes: (i) multi-year authorization by Congress of the funding for various highway programs; (ii) apportionment and allocation of funds to the states each federal fiscal year according to statutory formulas or, for some funding categories, through administrative action; (iii) obligation of funds, which is the federal government’s legal commitment (or promise) to pay or reimburse states for the federal share of a project’s eligible costs; (iv) appropriations by Congress specifying the amount of funds available for the year to liquidate obligations; (v) program implementation which covers the programming and authorization phases; and (vi) reimbursement by the federal government of the eligible project costs. The FAHP, including SAFETEA-LU, is, however, subject to federal rescission of funds enacted by federal law which reduces the amount of funds available under an existing appropriation or authorization act. See APPENDIX C - “INFORMATION CONCERNING THE FUNDING OF FEDERAL-AID HIGHWAYS.”

State law currently provides that federal funds appropriated for public road construction in the State may only be spent by and under the supervision of the Department. Such funds are deposited to the credit of the Fund. Federal transportation program funds received and deposited to the Fund for the fiscal years 2005 through 2009, and the portion of the total Fund represented by receipts of federal funds, are shown in the following table.

**Table 9**  
**Reimbursements from Federal Funds<sup>(1)</sup>**  
**(In Millions)**

Fiscal Year	Amount Deposited	Percentage of Total Fund Receipts
2005	\$ 3,284.9	49 %
2006	3,139.5	46
2007	2,026.1 <sup>(2)</sup>	35
2008	2,727.6	42
2009	2,666.6	41

(1) Presented on a cash basis of accounting. Includes certain federal aviation and transit reimbursement funds that are not constitutionally dedicated but are a component of Pledged Revenues.

(2) Amounts in FY 2005 and 2006 include acceleration of certain projects due to utilization of accelerated federal reimbursements from the Department's application of federal "tapered match" reimbursement. In fiscal year 2007, the accelerated federal "tapered match" reimbursements decreased significantly.

SAFETEA-LU's Equity Bonus Program generally guarantees that no state's share of certain apportioned federal highway program funds may be less than 90.5% in federal fiscal years 2005 and 2006, and increasing to 92% in federal fiscal years 2008 and 2009, of its attributed share of highway user tax revenue contributed to the Highway Account of the HTF. For all federal highway funding programs, the State is a donor state receiving approximately an 88% rate of return on its share of contributions to the Highway Account of the HTF. For federal fiscal year 2009, approximately \$56.0 million in federal transit reimbursement funds, \$70.9 million in federal aviation reimbursement funds and \$37.6 million of federal traffic safety reimbursement funds were deposited to the credit of the Fund. Funds from the HTF support a variety of federal transportation programs that, for the purposes of this discussion, are grouped into four broad categories: (i) Guaranteed Highway Programs; (ii) Discretionary Highway Programs; (iii) Highway Safety Programs; and (iv) Transit Programs. See APPENDIX C - "INFORMATION CONCERNING THE FUNDING OF FEDERAL-AID HIGHWAYS."

The distribution of funds using a formula provided in law is called an apportionment. Most federal-aid funds are distributed to states through apportionments. Each federal fiscal year, the FHWA has responsibility for apportioning authorized funding for the various highway programs among the states according to formulas established in the authorizing statute, currently SAFETEA-LU. When there are no formulas in law, the distributions of funds are termed "allocations" which may be made at any time during the federal fiscal year. In most cases, allocated funds are divided among states with qualifying projects applying general administrative criteria provided in the law. The annual apportionments to the Department under SAFETEA-LU were \$2.77 billion in federal fiscal year 2005, \$2.76 billion in federal fiscal year 2006, \$2.90 billion in federal fiscal year 2007, \$3.01 billion in federal fiscal year 2008, \$3.04 billion in federal fiscal year 2009 and \$3.2 billion in federal fiscal year 2010. However, in federal fiscal years 2006 through 2009, there were eight separate federal rescissions of certain amounts appropriated under SAFETEA-LU in the approximate aggregate amounts of \$3.8 billion, \$4.3 billion, \$3.2 billion and \$11.9 billion, respectively. Texas' share of such rescissions was \$305,094,345, \$360,834,408, \$257,989,173 and \$1,014,643,500 for federal fiscal years 2006 through 2009, respectively; provided, however, that in February 2010, Congress passed HR2847, which restored \$8.7 billion of the authorization rescinded in 2009, including \$742,240,415 of the State's share of such rescinded authorization. See APPENDIX C - "INFORMATION CONCERNING THE FUNDING OF FEDERAL-AID HIGHWAYS - Federal Aid Funding Procedures - Apportionment, Allocations and Rescissions."

The following table provides a history of the apportionments and allocations, as applicable, to the State for certain federal highway funding programs in the State from the federal fiscal years 2005 through 2009.

**Table 10**  
**Federal Transportation Funds Apportioned and Allocated for Texas<sup>(1)</sup>**  
**(In Millions)**

<u>Program</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Guaranteed Highway Programs	\$ 2,649.1	\$ 2,590.5	\$ 2,976.5	\$ 2,953.0	\$ 3,150.9
Discretionary Highway Programs	16.7	4.9	0.4	3.3	1.3
Highway Safety Programs	16.7	23.8	163.8	146.9	157.9
Transit Programs	28.8	45.2	52.8	56.9	111.9
Aviation Programs	55.2	57.4	56.3	60.7	78.1
TOTAL	<u>\$ 2,766.5</u>	<u>\$ 2,721.8</u>	<u>\$ 3,249.8</u>	<u>\$ 3,220.8</u>	<u>\$ 3,500.1</u>

<sup>(1)</sup> Based upon data from the United States Department of Transportation. Years shown are federal fiscal years.

Obligation authority is the commitment (or promise) of the federal government to pay, through reimbursement to a state, the federal share of an approved project's eligible costs, which may include debt service on obligations issued to finance a project. This process is important to the states because it allows states to award contracts with assurance that the federal government will reimburse its share of incurred costs. Once an obligation is made, the federal government is to reimburse the states when bills or payments become due. However, Congress places a restriction or "ceiling" on the amount of federal assistance that may be obligated (promised) during a specified time period. The obligation limitation is the amount of authorized funding that Congress allows states to obligate in an individual year. This is a statutory budgetary control that does not affect the apportionment or allocation of funds. Rather, it controls the rate at which these funds can be used.

FHWA distributes obligation authority to states proportionately based on each state's share of apportioned and allocated revenues. During the federal fiscal year, states submit requests to FHWA to obligate funds, representing the federal share of specific projects. As a state obligates funds, its balance of obligation authority is reduced. A state's obligation authority (unlike its apportionments and allocations of authorized funding) must be used before the end of the federal fiscal year for which it is made available; if not, it will be distributed to other states to ensure that the total limitation nationwide will be used. Although a ceiling on obligations restricts how much funding may be used in a federal fiscal year, the state has flexibility within the overall limitation to mix and match the type of program funds it obligates, based on its individual needs, as long as it does not exceed the ceiling in total.

The following table provides a history of the obligation authority to the State for certain federal highway funding programs in the State from the federal fiscal years 2005 through 2009.

**Table 11**  
**Federal Transportation Obligation Authority for Texas**  
**(In Millions)<sup>(1)</sup>**

<u>Fiscal Year</u>	<u>Amount</u>
2005	\$ 2,592.1
2006	2,542.9
2007	2,852.7
2008	2,897.0
2009	3,073.6

<sup>(1)</sup> Excludes obligation authority for the State's Aviation and Transit Programs.

The amounts shown in Table 10 - "Federal Transportation Funds Apportioned and Allocated for Texas" above represent federal funds that have been "apportioned" or "allocated" to the State pursuant to federal legislation and the amounts shown in Table 11 - "Federal Transportation Obligation Authority for Texas" above represent federal funds that have been "obligated" to the State by the FHWA pursuant to federal legislation, but do not

represent funds actually received by the State for any given period. For amounts of federal funds actually received by the State during fiscal years 2005 through 2009, see “THE STATE HIGHWAY FUND - Table 9 - Reimbursements from Federal Funds.”

American Recovery and Reinvestment Act of 2009: The Recovery Act provides \$27.5 billion in formula grants to states for highways and bridges. The highway and bridge total for Texas is \$2,250,015,000. Of that amount, approximately \$1.68 billion is allocated directly to the Commission (a minimum of \$175 million of this amount must be spent in rural areas), and approximately \$500 million is directly allocated to the State’s Metropolitan Planning Organizations, while the remaining \$67.5 million is allocated for transportation enhancement projects (e.g. hike and bike trails). To date, all funds have been obligated and the State has until 2015 to expend all the funding.

**Uses of the Fund**

**General.** Funds that are required to be used for public roadways by State or federal law and that are deposited to the credit of the Fund, including federal funds deposited to the credit of the Fund pursuant to SAFETEA-LU, may be used only (i) to improve the State Highway System, (ii) to mitigate adverse environmental effects that result directly from the construction or maintenance of a state highway by the Department or (iii) by DPS to police the State Highway System and administer State laws relating to traffic safety. Money in the Fund that is not so restricted may be used for any functions performed by the Department, including expenses relating to the Department’s “pay as you go” construction program, payroll, repairs and maintenance expenses, costs of materials and supplies, professional fees or commitments, utilities, rents and lease payments and intergovernmental payments. Debt service on the Bonds, any additional Senior Obligations and Subordinate Obligations, including long-term obligations and financial commitments, are also paid from the Fund. To accomplish these purposes, money in the Fund is appropriated by the Legislature to the Department, DPS, and certain other State agencies. See “THE STATE HIGHWAY FUND - General.”

The following table sets out the appropriation of funds by the Legislature to the Department for the four most recent State biennia, the current State biennium and the approximate percentage of total appropriations from the Fund represented by such appropriations.

**Table 12**  
**Appropriations to the Department from the**  
**State Highway Fund**  
**(In Millions)**

State Biennium	Amount Appropriated <sup>(1)</sup>	Percentage of Total Fund Appropriations
2002-03	\$ 10,579.7	93.88 %
2004-05	10,960.3	91.85
2006-07	13,579.7	91.83
2008-09	17,089.3 <sup>(2)</sup>	92.07
2010-11	17,286.2 <sup>(2)</sup>	93.70

<sup>(1)</sup> Includes appropriations made to other State agencies (e.g., the ERS (hereinafter defined)) for the benefit of the Department.

<sup>(2)</sup> Includes bond proceeds and debt service.

The Department operates under a two-year budget cycle. In preparing its Legislative Appropriations Request (“LAR”), the Department relies upon its cash flow forecast for the Fund, which delineates current and future obligations of the Department while forecasting the monthly revenue, expenditure, lowest daily balance, and ending balance for the Fund. From the forecast, the amount of expenditures (appropriations) that can be handled by the Fund can be determined. After accounting for existing obligations, the Commission then allocates the projected available resources among the competing needs identified by the various Department offices. Once these funding priorities have been determined, the data is entered into the Department’s LAR and submitted to the Legislature for consideration in enacting the State appropriations bill. Once the appropriations bill takes effect, it will be

implemented as the State budget for the next two-year biennium, taking effect on the next September 1. The budget is law, though it is not codified and does not otherwise appear in Vernon’s Texas Statutes, and State agencies are bound by it. The Legislative Budget Board and the State Auditor’s Office are responsible for monitoring compliance.

**Capital Projects and Proposed Debt Financings.** As required by various State and federal laws, the funding priorities of the Commission are outlined in various transportation plans approved by the Commission and various metropolitan and rural planning organizations within the State. The Statewide Transportation Plan is a long-range plan outlining the transportation goals of the Commission over a 20-year period. From such plan, the Commission develops the Unified Transportation Program (“UTP”) that covers transportation projects over a period which includes the current year plus 10 years. The UTP contains “Construct” transportation projects to be constructed over the next four years and for which funding is firm and “Develop” transportation projects to be developed over the following seven years and for which funding is yet to be determined. At the same time, the 25 metropolitan planning organizations and 25 rural planning organizations comprised of representatives of various local governmental entities in such regions each approve a three-year Transportation Improvement Program (the “TIP”). The TIPs approved by such local planning organizations are used to create the Statewide Transportation Improvement Plan (the “STIP”) for projects to be constructed by the Commission over the next three year period as part of the “Construct” UTP projects. All projects funded by the Department and reimbursed by the FHWA must be included in the STIP.

The Commission has funded a greater number of highway projects, through its Strategic Priority Funds, by funding projects over a 15 to 20 year time frame (and committing the use of the Strategic Priority Funds over such longer period), thereby decreasing the annual cost by extending the period in which a project will be paid. The Commission has used a number of different financing mechanisms to implement this strategy, including pass-through toll agreements and toll equity agreements. The Commission is also accelerating development and construction of highways through the issuance of debt secured by and payable from the Texas Mobility Fund (described below) and through the issuance of the Bonds, additional Senior Obligations and Subordinate Obligations. See “THE STATE HIGHWAY FUND - General,” “- Subordinate Obligations,” “PLAN OF FINANCE,” “THE BONDS - Outstanding and Additional Senior Obligations and Tiers of Senior Obligations” and “- Issuance of Subordinate Obligations.”

**Table 13**  
**Projected Contract Awards to Construction Contracts to be Let by the Department**  
**(In Millions)<sup>(1)</sup>**

Fiscal Year	Amount
2010	\$ 1,575.6
2011	1,540.1
2012	2,009.8
2013	2,100.2
2014	2,114.7
2015	2,192.3

<sup>(1)</sup> Excludes expenditures paid from the Texas Mobility Fund and proceeds of Previously Issued First Tier Senior Obligations, the Bonds or additional Senior Obligations.

The Commission intends to finance its continuing construction program through a number of methods. The Commission is issuing the Bonds to finance a portion of its construction program. Additionally, the Commission currently plans to issue up to a total aggregate principal amount of \$2.9 billion of bonds or other public securities (including the Bonds) by August 31, 2012, as additional Senior Obligations. The amount of such debt, when added to the Previously Issued First Tier Senior Obligations, consume the current \$6 billion aggregate limit imposed by the Act; provided, however, that the Texas Legislature may amend the Act in the future to increase the limit imposed by the Act. The Commission also plans to issue debt payable from and secured by the Texas Mobility Fund to finance a portion of the Commission’s capital program. See “Texas Mobility Fund” below for a description of such fund and debt. The Commission also plans to enter into certain agreements and commitments, including pass-through toll agreements, toll equity agreements and multi-year construction contracts and agreements, to finance, assist in the

financing, or outright develop and construct, highway projects. All such agreements and commitments are expected to be Subordinate Obligations. See “Subordinate Obligations” below.

***Texas Mobility Fund.*** The Texas Legislature established the Texas Mobility Fund (the “Mobility Fund” pursuant to Article III, Section 49-k of the Texas Constitution and Subchapter M of Chapter 201, Texas Transportation Code. The Mobility Fund is held in the State treasury and is administered by the Commission to provide a method of financing the construction, reconstruction, acquisition, and expansion of State highways, including costs of any necessary design and costs of acquisition of rights-of-way. The Mobility Fund may also be used to provide participation by the Department in the payment of a portion of the costs of constructing and providing publicly owned toll roads and other public transportation projects. The Texas Constitution and the Texas Transportation Code authorize the Commission to issue obligations with a maturity not to exceed 30 years, and enter into related credit agreements that are payable from and secured by a pledge of and a lien on all or part of the money on deposit in the Texas Mobility Fund in an aggregate principal amount that can be repaid when due from money on deposit in the Texas Mobility Fund, as that aggregate principal amount is projected by the Comptroller in accordance with procedures established by law. No constitutionally dedicated money in the Fund may be deposited into the Texas Mobility Fund or pledged to pay obligations secured by the Texas Mobility Fund, but money in the Fund may be used initially for projects which may be financed by the Texas Mobility Fund, with the Fund being reimbursed from the Texas Mobility Fund. As of the date hereof, the Commission has issued obligations in an aggregate principal amount of \$6,255,100,000, and \$244,900,000 remain unissued out of the \$6.5 billion currently established for the Texas Mobility Fund Revenue Financing Program (the “Mobility Fund Program”). The Bond Review Board has approved one or more series of bonds in the aggregate principal amount of not to exceed \$6.4 billion (including premium) and, therefore, additional Bond Review Board approval will be necessary for the Commission to issue up to the total \$6.5 billion aggregate principal amount of obligations currently established for the Mobility Fund Program.

### **Subordinate Obligations**

***Cash Flow Financing Programs.*** The Texas Constitution (Article III, Section 49-m) and the Texas Transportation Code (Section 201.115) authorize the Commission to borrow money from any source to carry out the functions of the Department. A loan incurred pursuant to Section 201.115 may be in the form of an agreement, a note, a contract, or another form, as determined by the Commission. The term of a loan may not exceed two years, and the amount of a loan, combined with any other loans issued and outstanding pursuant to Section 201.115, may not exceed an amount that is two times the average monthly revenue deposited to the State Highway Fund for the 12 months preceding the month in which the loan is made. A loan incurred pursuant to Section 201.115 is payable from legislative appropriation of amounts on deposit in the Fund for that purpose.

The Commission established a commercial paper program pursuant to Section 201.115 in 2005 in the maximum authorized amount of \$500 million. The Department intends to utilize the commercial paper program to facilitate efficient cash management operations in the State Highway Fund in response to fluctuations in the cash balance of the State Highway Fund as a result of the cyclical nature and uncertain timing of deposits into and payments out of the State Highway Fund. As of June 30, 2010, \$65,000,000 of commercial paper notes (the “Notes”) were outstanding. Although the Notes are payable from the Fund, the payment obligation is subordinate to the Bonds, which have a prior lien pledge of the revenues deposited into the Fund.

Additionally, the Texas Transportation Code (Sections 201.961, et seq.) authorizes the Commission to issue highway tax and revenue anticipation notes (“HTRANS”) if the Commission anticipates a temporary cash flow shortfall in the State Highway Fund during any Fiscal Year. The HTRANS are subject to the approval of the Cash Management Committee (consisting of the Governor, the Lieutenant Governor, the Speaker of the House and the Comptroller), which also approves cash flow borrowings of the State. Prior to issuing HTRANS, the Commission must submit to the Cash Management Committee a State Highway Fund cash flow shortfall forecast detailing the estimated revenues and expenditures of the State Highway Fund. The amount of HTRANS issued may not exceed the maximum cash flow shortfall forecast. In addition, HTRANS must mature during the fiscal biennium in which they are issued, and HTRAN proceeds must be placed in a special fund in the State Treasury and transferred as necessary to the State Highway Fund to pay authorized expenditures. HTRANS and related credit agreements are payable from amounts on deposit in the State Highway Fund. To date, the Commission has not issued any such anticipation notes, and the Commission does not expect to issue HTRANS in 2010. Although the anticipation notes,

if issued, are payable from the Fund, such payment obligation is subordinate to the Bonds, which will have a prior lien pledge of the revenues deposited into the Fund.

***Other Obligations and Commitments.*** In addition to the Bonds, additional Senior Obligations, the Notes and other Subordinate Obligations, including certain obligations and commitments described in “General” and “Uses of the Fund” above, there are a number of obligations and commitments that the Commission and the Department have incurred or entered into as Subordinate Obligations and that are to be paid or are expected to be paid from the Fund. Some of these long-term obligations and commitments are described below.

**Toll Equity Obligations.** Section 222.101 of the Texas Transportation Code, as amended, authorizes the Department to spend money from any available source, including the Fund, for the construction, maintenance, and operation of toll facilities. Under Texas Transportation Code, Section 222.103, as amended (“Section 222.103”), and pursuant to the terms and conditions established by the Commission, the Department may participate in the acquisition, construction, maintenance, or operation of a toll facility with a public or private entity authorized by state law to construct or maintain a toll facility. Section 222.103 requires the Commission to recoup any money spent by the Department for the cost of a toll facility owned by a private entity. In contrast, Section 222.103 provides the Commission with the option of requiring repayment of any money spent by the Department for the cost of a publicly owned toll facility. Thus, moneys provided by the Department under Section 222.103 may be in the form of loans (to either public or private entities) or grants (to public entities only).

Current law limits the amount of money that the Department may grant each fiscal year under Section 222.103 to no more than the amount that, together with amounts granted for the preceding four fiscal years, results in an average annual expenditure of \$2 billion. Toll equity loans under Section 222.103 are not included in the calculation of the limitation. The Department currently estimates that toll equity obligations (both grant payments and loan disbursements) in the amount of approximately \$19 million in fiscal year 2010, \$53 million in fiscal year 2011, and \$16 million in fiscal year 2012 will be funded from the Fund. The Commission anticipates entering into additional toll equity agreements in the future, and it is currently anticipated that all toll equity obligations will be funded from Federal reimbursements, motor fuels and lubricant taxes and vehicle registration fees. It should be noted, that all toll equity obligations are subject to the appropriation of lawfully available funds to make such payments; and, therefore, such payments are subordinate to the Bonds which will have a prior lien pledge of the revenues deposited into the Fund.

The Department currently has toll equity agreements or commitments for three types of projects: (i) Department projects with outstanding debt in which the Commission has covenanted to provide toll equity; (ii) Department projects with no outstanding debt; and (iii) projects of other public entities in which the commitment is by an agreement with such entity.

Currently, the Department has covenanted to provide toll equity for only one Department project with outstanding debt which is in connection with the issuance of approximately \$2.2 billion of revenue obligations by the Commission in August 2002 (the “Series 2002 Obligations”) to finance a portion of the costs of planning, designing, engineering, developing and constructing the initial phase of the Central Texas Turnpike System (the “2002 Project”) in the greater Austin metropolitan area. The Commission has covenanted with the owners of the Series 2002 Obligations to pay (i) \$700,000,000 in construction costs of the 2002 Project, payable in monthly installments in each of the fiscal years 2004 through 2008, (ii) approximately \$24,560,000 toward the cost of right-of-way for the Loop 1 element of the 2002 Project and (iii) operation and maintenance costs to the extent necessary in conjunction with the 2002 Project. To date, approximately \$628.9 million of the funding commitment for the 2002 Project has been disbursed from the Fund for capital, right-of-way, operations and maintenance costs. On April 12, 2007, based upon a certification of the Chief Financial Officer of the Department and the report of the general engineering consultant, the Department determined there were sufficient funds on hand to complete the 2002 Project and suspended making further deposits to the 2002 Project from the Fund.

The Department is also developing a number of toll facilities for which there is no outstanding debt and is advancing the projects through the use of the Fund. As there is no outstanding debt and, therefore, no covenants, these projects are managed in the same manner as other Department developed projects.

Finally, the Department has entered into several toll equity agreements in connection with the development, construction and/or maintenance of projects being developed by other public entities, including the following:

- (i) The Central Texas Regional Mobility Authority (the “CTRMA”): In connection with the 183A toll road being developed and constructed by the CTRMA, the Department disbursed approximately \$4,017,323 in fiscal year 2008 from the Fund to the CTRMA for development and construction costs and does not anticipate disbursing any funds under this agreement in fiscal year 2010.
- (ii) The Alamo Regional Mobility Authority (the “Alamo RMA”): The Department made a \$1,000,000 toll equity grant to the Alamo RMA to pay certain engineering, legal and financial planning costs to study and analyze competing proposals submitted for the proposed Loop 1604 and US 281 turnpike project and its impacts on other potential elements of a proposed toll system in Bexar County. The toll equity grant became a loan when the project was transferred to the Alamo RMA. \$913,890 was disbursed by late calendar year 2007.

The Department approved another toll equity loan of \$7,500,000 for the Alamo RMA to pay the costs for developing preliminary feasibility, environmental, public involvement, schematics and preliminary financial plans for managed or tolled lanes on I-35 from the Bexar/Guadalupe County line to the San Antonio Central Business District, managed or tolled lanes on SH 16 west from the Interstate Loop 410 to Loop 1604 northwest, and the tolled interchange at US 281 and Wurzbach Parkway. \$4,542,185 was disbursed by late calendar year 2007.

A toll equity grant of \$19,800,000 was approved for the Alamo RMA to fund the costs of preliminary engineering, right of way acquisition, and other related development costs for the US 281 North Toll Project within the right of way of the US 281 corridor from north of Loop 1604 to the Bexar/Comal county line. A revision to this agreement was executed in February 2009 as a result of the FHWA revoking the environmental clearance for the project and directing that a more comprehensive environmental study was needed. The revision allowed the grant to be used for the new environmental study and related costs with any balance to be used as originally intended. This grant was amended again in August 2009 to provide funding of up to \$825,000 from the \$19,800,000 grant or the \$12,390,000 loan (described below), or a combination of both, for predevelopment and development costs incurred by the Alamo RMA in connection with the authority’s construction of the US 281 and Loop 1604 interchange project. The Alamo RMA intends to request additional funding from the Commission. If approved, additional funding in the amount of \$265,000 will be provided for the completion of predevelopment and development costs incurred by the Alamo RMA in connection with the authority’s construction of the US 281 and Loop 1604 interchange project. This toll equity commitment is expected to be disbursed by the end of calendar year 2012.

A new toll equity loan of \$12,390,000 was executed in February 2009. The loan is to be used for feasibility studies, environmental studies, public involvement, schematics, and preliminary plans associated with the addition of toll lanes on Loop 1604 from SH 151 to I-35, including the costs of necessary administrative, legal, engineering, and other services. This loan was amended in August 2009 to provide funding of up to \$825,000 from the \$19,800,000 grant or the \$12,390,000 loan, or a combination of both, for predevelopment and development costs incurred by the Alamo RMA in connection with the authority’s construction of the US 281 and Loop 1604 interchange project. This loan was amended again in April 2010, extending the limits from SH 151 to US 90. The Alamo RMA intends to request additional funding from the Commission. If approved, additional funding in the amount of \$265,000 will be provided for the completion of predevelopment and development costs incurred by the Alamo RMA in connection with the authority’s construction of the US 281 and Loop 1604 interchange project. This toll equity commitment is expected to be disbursed by the end of calendar year 2018.

- (iii) The Northeast Texas Regional Mobility Authority (the “NET RMA”): Loop 49 being developed by The NET RMA has received authorization for a \$12,250,000 toll equity loan to pay for costs associated with the further study and development of the Loop 49 project in Smith County,

including the costs of certain design and engineering services and legal and financial advisory services. This toll equity commitment is expected to be disbursed by the end of 2010. The NET RMA has selected a developer for Phase 3B of Loop 49 and construction is anticipated to begin in 2011 pending financial closure.

- (iv) The Cameron County Regional Mobility Authority (the “Cameron County RMA”): West Loop and Second Causeway projects being developed by the Cameron County RMA have received authorization for a \$21,600,000 toll equity loan to pay for costs associated with the further study and development of West Loop (\$12,400,000) and the Second Causeway (\$9,200,000). Of this commitment, approximately \$5,000,000 will have been disbursed by the end of fiscal year 2010. An additional \$7,000,000 are expected to be disbursed by the end of 2012 to complete preliminary engineering activities.
- (v) North Texas Tollway Authority (the “NTTA”): In February 2010, the Commission authorized the execution of a new toll equity loan agreement between the Department and the NTTA (the “SH 161 Agreement”) which authorizes a maximum aggregate loan amount of \$4,093,677,822. Pursuant to the SH 161 Agreement under certain circumstances, the Department will provide funds to the NTTA to pay for certain costs relating to the design, construction, operations, maintenance, major maintenance, capital expenditures and acquisition payment costs incurred or reasonably anticipated to be incurred by the NTTA for the SH 161 Project. The loan is available in maximum annual amounts ranging from \$8.4 million to \$253.5 million and will only be drawn upon if toll revenues are insufficient to pay debt service or budgeted operations and maintenance costs. In addition, the Department is working with the NTTA for a similar loan for the Southwest Parkway/Chisholm Trail Project for up to approximately \$2,366,561,333. For the Southwest Parkway/Chisholm Trail Project, TxDOT has also committed to provide \$49.87 Million for a portion of the costs associated with rail relocation, a \$25 million federal earmark, and \$91 million of State Highway Fund bond proceeds. The purpose of the loans for these projects are to enhance the credit rating of the debt and are not anticipated to be drawn upon due to the expected strength of the project cash flows. If a loan is actually needed for these projects, the Department will have sufficient advance notice to allow adjustments to future construction lettings. The payments by the Department pursuant to any loan agreement executed with NTTA will be subject to appropriation and such payments are subordinate to the Senior Obligations, including the Bonds which will have a prior lien on the Pledged Revenues.

Pass-Through Toll Agreements. Section 222.104 of the Texas Transportation Code, as amended (“Section 222.104”) provides for the payment of a “Pass-Through Toll,” a per vehicle fee or per vehicle mile fee determined by the number of vehicles using a highway, for specific purposes. First, pursuant to Section 222.104 and subject to Commission rules, the Department may enter into an agreement with a public or private entity that provides for the payment of Pass-Through Tolls to reimburse the public or private entity for expenditures made by the public or private entity for the design, development, financing, construction, maintenance or operation of a toll or non-toll facility on the State Highway System. Second, the Department may enter into an agreement with a private entity that provides for the payment of Pass-Through Tolls by the private entity to the Department as reimbursement for Department expenditures for the design, development, financing, construction, maintenance or operation of a toll or non-toll facility on the State Highway System. Finally, the Department and a regional mobility authority (“RMA”), a regional tollway authority (“RTA”) or a county may enter into an agreement that provides for: (i) the payment of Pass-Through Tolls to the RMA, RTA or county as compensation for the payment of all or a portion of the costs of maintaining a state highway or a portion of a state highway transferred to the RMA, RTA or county after being converted to a toll facility that the Department estimates it would have incurred if the highway had not been converted or (ii) the payment by the RMA, RTA or county of Pass-Through Tolls to the Department as reimbursement for all or a portion of the costs incurred by the Department to design, develop, finance, construct and maintain a state highway or a portion of a state highway transferred to the RMA, RTA or county after being converted to a toll facility. The Department may use any available funds, including money on deposit within the Fund, for the purpose of making a Pass-Through Toll payment. It is currently anticipated that all Pass-Through Toll commitments will be paid from the State Highway Fund.

To date, the Department has executed 17 Pass-Through Toll agreements. The executed Pass-Through Toll agreements with the City of Austin, Bexar County, the City of Brenham, Camino Real Regional Mobility Authority and J.D. Abrams, L.P., Comal County, the City of Forney, Galveston County, Grayson County, Hays County, Montgomery County, the City of San Marcos, Titus County, Val Verde County, the City of Weatherford and Williamson County range in term from four to 20 years, have a total pass-through reimbursement amount of approximately \$1.46 billion with a minimum aggregate annual reimbursement of approximately \$100 million and a maximum aggregate annual reimbursement of approximately \$160 million.

The Department has adopted an internal policy to limit its financial exposure with respect to Pass-Through Toll payments to not exceed the \$300 million Strategic Priority Funds per fiscal year; however, such policy is subject to change by the Commission.

### **Investment Authority and Investment Practices for the Fund**

***Investment Authority.*** The Fund is held within the State treasury and is invested and collateralized by the Comptroller in accordance with State law. Under current law, the Comptroller may commingle money on deposit in the Fund with other money and funds held within the State treasury and invest such money as authorized pursuant to Section 404.024, Texas Government Code (“Section 404.024”). State law and the Comptroller’s Investment Policy are subject to change. Dedicated Revenues include interest earnings on Dedicated Taxes, Dedicated Federal Revenues and Dedicated Registration Fees, which remain within the Fund. Interest Earnings on amounts collected or received pursuant to other State Highway Fund Revenue Laws are transferred to the State’s general revenue fund.

Pursuant to Section 404.024, money on deposit in the Fund may be placed by the Comptroller in time deposits with State depositories or may be invested by the Comptroller in the following obligations: (i) direct security repurchase agreements; (ii) reverse security repurchase agreements; (iii) direct obligations of or obligations the principal and interest of which are guaranteed by the United States; (iv) direct obligations of or obligations guaranteed by agencies or instrumentalities of the United States government; (v) bankers’ acceptances that: (A) are eligible for purchase by the Federal Reserve System; (B) do not exceed 270 days to maturity; and (C) are issued by a bank whose other comparable short-term obligations are rated in the highest short-term rating category by a nationally recognized statistical rating organization; (vi) commercial paper that: (A) does not exceed 270 days to maturity; and (B) except as provided below, is issued by an entity whose other comparable short-term obligations are rated in the highest short-term rating category by a nationally recognized statistical rating organization; (vii) contracts written by the Comptroller in which the Comptroller grants the purchaser the right to purchase securities in the Comptroller’s marketable securities portfolio at a specified price over a specified period and for which the Comptroller is paid a fee and specifically prohibits naked-option or uncovered option trading; (viii) direct obligations of or obligations guaranteed by the Inter-American Development Bank, the International Bank for Reconstruction and Development (the World Bank), the African Development Bank, the Asian Development Bank, and the International Finance Corporation that have received the highest long-term rating categories for debt obligations by a nationally recognized statistical rating organization; (ix) bonds issued, assumed, or guaranteed by the State of Israel; (x) obligations of a state or an agency, county, city, or other political subdivision of a state; (xi) mutual funds secured by obligations that are described by subdivisions (i) through (vi) above or by obligations consistent with Rule 2a-7 (17 C.F.R. Section 270.2a-7), promulgated by the Securities and Exchange Commission, including pooled funds: (A) established by the Texas Treasury Safekeeping Trust Company; (B) operated like a mutual fund; and (C) with portfolios consisting only of dollar-denominated securities; (xii) foreign currency for the sole purpose of facilitating investment by state agencies that have the authority to invest in foreign securities; (xiii) asset-backed securities, as defined by the Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Section 270.2a-7), that are rated at least “A” or its equivalent by a nationally recognized statistical rating organization and that have a weighted-average maturity of five years or less; and (xiv) corporate debt obligations that are rated at least “A” or its equivalent by a nationally recognized statistical rating organization and mature in five years or less from the date on which the obligations were “acquired,” as defined by the Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Section 270.2a-7).

Investments in direct security repurchase agreements and reverse security repurchase agreements may be made with state or national banks doing business in this State or with primary dealers as approved by the Federal Reserve System. Notwithstanding any other law, the term of any reverse security repurchase agreement may not exceed 90 days after the date the reverse security repurchase agreement is delivered. Money received under the

terms of a reverse security repurchase agreement may be used to acquire additional authorized investments, but the term of the authorized investments acquired must mature not later than the expiration date stated in the reverse security repurchase agreement.

The Comptroller may purchase commercial paper with a rating lower than the highest short-term rating to provide liquidity for commercial paper issued by the Comptroller or a State Agency.

The Comptroller may lend securities under procedures established by the Comptroller. The procedures must be consistent with industry practice and must include a requirement to fully secure the loan with cash, obligations, or a combination of cash and obligations. In this paragraph, “obligation” means an item described by clauses (i) through (vi) of the second paragraph of this section.

The Comptroller may contract with a depository for the payment of interest on time or demand deposits at a rate not to exceed a rate that is lawful under an act of Congress and rules and regulations of the board of governors of the Federal Reserve System, the board of directors of the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, and the Federal Home Loan Banking Board.

The Comptroller may not purchase any of the following types of investments: (i) obligations the payment of which represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal; (ii) obligations the payment of which represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest; (iii) collateralized mortgage obligations that have a stated final maturity date of greater than 10 years; and (iv) collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

The Comptroller by rule may also define other prohibited investments. The Comptroller may not purchase investments defined by rule adopted in an amount that at the time of purchase will cause the aggregate value of the investments to exceed five percent of the Comptroller’s total investments. The Comptroller may not use State funds to invest in or purchase obligations of a private corporation or other private business entity doing business in Northern Ireland unless the corporation or other entity: (i) adheres to fair employment practices; and (ii) does not discriminate on the basis of race, color, religion, sex, national origin, or disability.

To the extent practicable, the Comptroller shall give first consideration to banks that maintain main offices or branch offices in this State when investing in direct security repurchase agreements.

The Comptroller shall invest funds under the restrictions and procedures for making the investments that persons of ordinary prudence, discretion, and intelligence, exercising the judgment and care under the prevailing circumstances, would follow in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

The Comptroller may contract with private professional investment managers to assist the Comptroller in investing funds under the care, custody, and control of the Comptroller.

***Investment Policies and Practices.*** The Comptroller’s principal investment and management objectives are as follows: (i) preservation of capital and protection of principal, first; (ii) maintenance of sufficient liquidity to meet operating needs, second; and (iii) maximization of return, third. The Comptroller will preserve capital and protect principal by investing in a diversified pool of assets of high credit quality. Interest rate risk will be managed by maintaining a weighted-average maturity of no more than two years.

Whenever practicable, the Comptroller and the Texas Treasury Safekeeping Trust Company will award investment transactions on a competitive basis by soliciting at least two bids and then placing purchase and sale orders with brokers to achieve best execution. All transactions will be fully documented by the individual executing the trade and confirmed by a second investment staff member.

The Comptroller enters into only fully collateralized repurchase agreements. The Comptroller’s Master Repurchase Agreement governs all transactions. Repurchase agreement collateral is limited to those securities

authorized for outright purchase by the Comptroller. All such collateral is held for safekeeping at the Federal Reserve Bank of Dallas, San Antonio Branch, in the name of the Comptroller or at an approved third party institution with which the Comptroller has executed a custodial undertaking agreement in connection with a master repurchase agreement. Collateral is monitored daily to ensure that margin requirements are maintained. Margin excesses or deficits will be corrected on a timely basis, generally no later than the next business day. Repurchase agreement transactions must be placed only with primary government securities dealers approved by the Federal Reserve System or state or national banks doing business in the State.

## **THE COMMISSION AND THE DEPARTMENT**

### **The Commission**

The State created the “State Highway Commission” on April 4, 1917, for the purpose of adopting and implementing a comprehensive system of State highways and promoting the construction of a State highway system by cooperation with counties or independently by the State Highway Commission. In 1975, the Legislature changed the name of the State Highway Commission to the “State Highway and Public Transportation Commission.” In 1991, the Legislature changed the name again to the “Texas Transportation Commission,” as it remains today. The Commission is the Department’s policy-making body and is composed of five commissioners appointed by the Governor of the State (the “Governor”) with the advice and consent of the State Senate. Commissioners serve overlapping six year terms. One member is designated by the Governor as the Chair and serves as the chief presiding officer of the Commission. A person is not eligible to be a member of the Commission if the person or the person’s spouse is employed by or manages a business that is regulated by or regularly receives funds from the Department; directly or indirectly owns or controls more than 10% interest in a business that is regulated by or receives funds from the Department; uses or receives a substantial amount of goods, services, or funds from the Department; or is registered, certified, or licensed by the Department.

The current members of the Commission are listed below.

#### **Deirdre Delisi, Chair**

Ms. Delisi is the chair of the Commission, which oversees the statewide activities of the Texas Department of Transportation. Governor Rick Perry appointed Ms. Delisi chair on April 30, 2008. Ms. Delisi has more than 12 years experience in government policy. She served as chief of staff and deputy chief of staff to Governor Perry, and served as his special assistant when he was lieutenant governor. A former policy advisor to the presidential campaigns of Lamar Alexander and George W. Bush, Ms. Delisi served at the Texas Department of Commerce and as legislative aide for Texas Senator Bill Ratliff. Ms. Delisi earned a bachelor’s degree in political science from Duke University and master’s degree in international policy studies from Stanford University.

#### **Ted Houghton, Commissioner**

Mr. Houghton was appointed to the Commission by Governor Perry in December of 2003. A native of El Paso, Mr. Houghton is self-employed in the fields of financial services, executive benefits, and estate planning. He is the first resident of El Paso to serve on the Commission. Mr. Houghton has served on the State of Texas School Land Board. He also served for eight years on the El Paso Water Utilities Public Service Board, on the board of directors of the El Paso Electric Company, as president of the Sun Bowl Association, and as a member of the 1984 Los Angeles Olympic Committee. He also served as vice president, chair of the public relations and communications committee and treasurer of the El Paso Rapid Transit Board. Mr. Houghton received his bachelor’s degree in finance from The University of Texas at El Paso.

#### **Ned S. Holmes, Commissioner**

Mr. Holmes was appointed to the Commission by Governor Perry in January of 2007. Mr. Holmes is chairman and CEO of Ned S. Holmes Investments, Inc., a company that develops and manages real estate nationwide. He is a member of the Urban Land Institute, and he has previously served on the City of Houston’s planning commission. Mr. Holmes served as chairman of the Port of Houston Authority from 1988 to 2000. In April 2003, Mr. Holmes was appointed by Governor Perry to the Texas Parks and Wildlife Commission. He

resigned that position to serve on the Commission. He also served as chairman, board member and as an executive committee member of the Greater Houston Partnership, and as chairman of Commercial Bancshares, Inc. from 1986 to 2000, when the company merged with Prosperity Bancshares. He was chairman of Prosperity Bancshares, Inc. from 2001 to 2006. Mr. Holmes received his bachelor's degree and law degree from The University of Texas at Austin.

#### **William Meadows, Commissioner**

Mr. Meadows was appointed commissioner by Governor Perry in April of 2008. Mr. Meadows is chairman of Hub International Rigg. He also served as vice chairman of the North Texas Tollway Authority. He is also a past appointee to the Texas Water Development Board and formerly served as a city council member and mayor pro-tempore for the City of Fort Worth. Mr. Meadows was past vice chairman of the City of Fort Worth Parks and Community Services Advisory Board and past board member of the Fort Worth Chamber of Commerce and Southwestern University. Mr. Meadows received a bachelor's degree from Southwestern University and attended the Harlaxton Institute in Grantham, England.

#### **Fred Underwood, Commissioner**

Mr. Underwood was appointed to the Commission by Governor Perry in January of 2007. Mr. Underwood is president and CEO of the Trinity Company, a cotton bale storage facility. He is both past vice president and past director of the National Cotton Council, and is a member of the advisory committee of Plains Capital Corporation. He also serves as chairman of the Ways and Means Committee of the Cotton Warehouse Association, where he previously served as president. Mr. Underwood also previously served as chairman of Lubbock International Airport Board and as a board member of the Lubbock Chamber of Commerce. Mr. Underwood received a bachelor's degree in management from Texas Tech University.

### **The Department**

The Department is a public authority and body politic and corporate created in 1917 as the "Texas Highway Department" by an act of the Legislature to administer federal funds for highway construction and maintenance. In 1975, the Legislature merged the Texas Highway Department with the "Texas Mass Transportation Commission" to form the "State Department of Highways and Public Transportation," and in 1991, the Legislature combined the State Department of Highways and Public Transportation, the Department of Aviation, and the Texas Motor Vehicle Commission to create the Department.

The mission of the Department is to provide safe, effective, and efficient movement of people and goods, and the Department's vision is to be a progressive State transportation agency recognized and respected by the citizens of the State for: (i) providing comfortable, safe, durable, cost-effective, environmentally-sensitive, and aesthetically appealing transportation systems that work together; (ii) ensuring a desirable workplace that creates a diverse team of all kinds of people and professions; (iii) using efficient and cost-effective work methods that encourage innovation and creativity; and (iv) promoting a higher quality of life through partnerships with the citizens of the State and all branches of government by being receptive, responsible, and cooperative.

The Department is charged with (i) developing and maintaining a statewide multimodal transportation network and (ii) other transportation-related duties. The Department's operations can be divided into five major categories:

- (1) **Plan It:** Includes all planning, design, right-of-way acquisition for highways and other modes of transportation, and transportation research that saves lives and money.
- (2) **Build It:** Includes highway and bridge construction and airport improvements.
- (3) **Use It:** Includes items like public transportation, traffic safety and travel information.
- (4) **Maintain It:** Includes the maintenance of roadways, bridges, airports, gulf waterways and ferry systems.

(5) **Manage It:** Includes central and regional administration, information resources and other support services.

The Department is headquartered in Austin, Texas, with 25 district offices, 4 regional offices and 26 divisions/offices located throughout the State. Each district is responsible for the planning, design, construction, maintenance, and operation of its area's transportation systems.

In March 2009, the Commission adopted Minute Order 111738, authorizing the development of four regional support centers which consolidated functions formerly provided at the district level. The establishment of regional support centers is the first phase of a Department-wide restructuring effort to improve the efficiency of Department processes, the accountability of the Department's performance and transparency of the Department's decisions to its many stakeholders, partners and customers.

Last year, the Commission obtained the services of Grant Thornton LLP, an independent accounting firm, to conduct a top-down management and organizational review of the Department. The Commission directed Grant Thornton LLP to perform this review pursuant to a recommendation from the Texas State Legislature in 2009. The final report was delivered to the Commission during its workshop meeting on May 26, 2010. The Commission will review all recommendations in the final report to determine implementation plans. The Commission and the Department's administration are deeply committed to improving the Department.

The primary function of the Department has been to build roads. However, over the years, by act of the Texas Legislature or order of the Governor's Office, various divisions have been created within the Department that are primarily customer-service related and vehicle related. These divisions include the Motor Carrier Division, the Automobile and Burglary Theft Prevention Division, the Motor Vehicle Division and the Vehicle Titles and Registration Division. House Bill 3097, passed during the 81st Session of the Texas Legislature, created the Texas Department of Motor Vehicles ("TxDMV"), which became operational on November 1, 2009. Pursuant to House Bill 3097, the TxDMV, rather than the Department, is now responsible for the following duties: vehicle registration and titling, issuing motor carrier operating authority, motor carrier enforcement, licensing vehicle dealers and awarding law enforcement agencies grants to reduce auto theft and increase public awareness.

The Department is managed by an Executive Director, subject to and under the direction of the Commission. The Executive Director and other key Department personnel are listed below.

**Amadeo Saenz, Jr., P.E., Executive Director**

Mr. Saenz, under the Commission's direction, manages, directs, and implements the Department's policies, programs, and operating strategies. He also represents the Department before the Texas Legislature and other entities. Mr. Saenz was appointed Executive Director on October 1, 2007. After earning a bachelor of science degree in civil engineering with honors from The University of Texas at Austin, Mr. Saenz joined the Department in 1978 in the Pharr District as an engineering laboratory assistant. Mr. Saenz served in various positions of increasing responsibility within the Pharr District, and was named district engineer in 1993. In 2001, Mr. Saenz was appointed as Assistant Executive Director for Engineering Operations in Austin.

**Steven E. Simmons, P.E., Deputy Executive Director**

Mr. Simmons, under the direction of the Executive Director, implements and manages Department policies and programs. He assists with the daily administrative and engineering operations of the Department. Mr. Simmons was appointed Deputy Executive Director on November 1, 2001. After earning a bachelor's degree in civil engineering from The University of Houston in 1981, Mr. Simmons joined the Department's Houston District in 1982 as a project manager in the Northwest Harris/Waller Area Office. He became a licensed professional engineer in 1986 and served in several positions for the Houston District, including deputy district engineer. Mr. Simmons was named Fort Worth district engineer in June of 1998 and in that position he served on the Regional Transportation Council of the North Central Texas Council of Governments, working to solve transportation issues in that region. Under Mr. Simmons' leadership, the Fort Worth District received the Design Excellence Award for a Metropolitan District in 1997, 1998 and 1999; no other district office has attained this honor.

**David Casteel, Assistant Executive Director for Field and District Operations**

As Assistant Executive Director for District Operations, Casteel oversees the Department's 25 districts. He holds bachelors and masters degrees from Texas A&M University and is a graduate of the Governor's Executive Development Program at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin. A Department employee since his first summer job with the Department in 1983, Mr. Casteel served as District Engineer of the Childress, Corpus Christi and San Antonio Districts before being selected to his current position in February 2008.

**John A. Barton, P.E., Assistant Executive Director for Engineering Operations**

As the Assistant Executive Director for Engineering Operations, Mr. Barton oversees and coordinates operations for nine divisions and offices. Mr. Barton assists in directing long and short-range planning for the agency including the establishment of overall operating objectives and the technical merits of programs and policies. Mr. Barton began working for the Department as a summer employee of the Wichita Falls District, while he was still in high school. After graduating from Texas A&M University, Mr. Barton continued his work for the Department. In 2003, Mr. Barton received the President's Award for Planning from the American Association of State Highway and Transportation Officials. Mr. Barton was District Engineer for the Beaumont District before being selected to his current position in February 2008.

**James M. Bass, Chief Financial Officer**

As the Department's Chief Financial Officer, Mr. Bass has financial oversight responsibility for the Department. Mr. Bass also oversees management of the Department's financial planning operations division (the "Finance Division"), which now includes programming and scheduling of all transportation projects and letting management activities associated with project delivery, following the Department's reorganization in November 2007. Under his direction, the Finance Division develops and implements systems and policies related to accounting, forecasting, budgeting, payment for goods and services, and the processing of receipts and revenues. The Finance Division also conducts cost-efficiency studies, manages the State Infrastructure Bank, manages debt programs and investment portfolios, and analyzes and reports the financial effects of proposed legislation. Mr. Bass began his career with the Department in 1985 in the Fort Worth District where he maintained records and audited field measurements. He also worked part-time as an engineering aide for the Austin District while earning his bachelor's degree in accounting. After graduation in 1991, Mr. Bass served as an accounting clerk in the Finance Division. In 1997, Mr. Bass became a manager in the Budget and Forecasting Branch, and in that position was responsible for preparation of the Department's Legislative Appropriations Request and Operating Budget, and working with the Legislative Budget Board, State Auditor's Office, and the Comptroller. He also worked on the Department's Cash Forecasting System for the State Highway Fund. Mr. Bass was named Finance Division Director in 1999 and his title was changed to Chief Financial Officer in 2005.

**Brian Ragland, Director, Finance Division**

As the Director of the Department's Finance Division, Mr. Ragland is responsible for the management and control of budget, revenue, disbursements, accounting and debt management for the Department as well as programming and scheduling and letting management of all transportation projects. Mr. Ragland began his career with the Department as the Director of the Department's Claims Management Section of the Finance Division in 2003. He left the Department in 2005 to pursue an opportunity as Senior Vice President and Chief Financial Officer of Walden Affordable Group, LLC, an affordable housing management firm. He began his career with the University of Texas System Administration as an accountant/auditor in their Oil and Gas department and then became the Financial Manager of their Employee Group Insurance section where he served until 1996. He then became Chief Financial Officer for the State Preservation Board where he oversaw all financial, human resources, enterprise and information resource functions of the agency until 2003, when he joined the Department. Mr. Ragland received his Bachelor of Business Administration degree in 1990 from The University of Texas at Austin and his Master's of Business Administration from Southwest Texas State in 1999. He is a licensed Certified Public Accountant.

### **John Muñoz, Deputy Director, Finance Division**

As Deputy Director of the Finance Division, Mr. Muñoz develops and implements systems and policies related to accounting, forecasting, budgeting, payment for goods and services, and the processing of receipts and revenues. He is also a lead participant for the Department in the comprehensive development agreement process. During his 22 year tenure with the Department, Mr. Muñoz has worked in the audit, budgeting, payment processing and administrative operations. Prior to his employment with the Department, Mr. Muñoz worked for the predecessor firm to KPMG performing audit and tax work. Mr. Muñoz earned a bachelor degree in accounting from The University of Texas at Austin in 1986 and is also a CPA and Certified Internal Auditor.

### **Bob Jackson, General Counsel**

Mr. Jackson assumed the position of General Counsel on September 15, 2006. Under his direction, the Office of General Counsel renders legal advice to the Commission and the Department. He also drafts Department rules, reviews legislation, serves as counsel at Commission meetings, and presides over public hearings. Mr. Jackson, who joined the Department 25 years ago as a planner in the Management Information, Policy and Research Section, has practiced law for 16 years. He earned his bachelor's degree in Government and Geography in 1980 and his master's degree in public affairs in 1985 from the Lyndon B. Johnson School of Public Affairs at The University of Texas at Austin. He earned his Doctor of Jurisprudence from the University of Houston Law School in 1990.

### **Retirement Plan of the Department**

The Department participates in joint contributory retirement plans of the State (collectively the "Plan") administered by the Employees Retirement System of Texas ("ERS"), which is operated by the State and which covers State employees and law enforcement and custodial officers. As of August 31, 2009, ERS had 141,223 active members, 15,684 inactive vested members, 56,901 inactive non-vested members and 75,722 annuitants. The Department employs approximately 12,000 employees and, for fiscal year 2009, approximately \$41 million had been budgeted from the Fund to ERS for retirement benefits for certain Department employees. The Department makes monthly payments to ERS for virtually all of its employees. ERS does not account for each State Agency separately.

On an actuarial basis as of August 31, 2009, the Plan's actuarial accrued liability was \$26,907,779,257. As of such date, the Plan had actuarial value of assets of \$23,509,621,791, leaving an unfunded actuarial accrued liability of \$3,398,157,466 (the Plan's "unfunded actuarial liability"). Accordingly, ERS's funded ratio as of August 31, 2009 was 87.4%, meaning that the ERS could pay today 87.4% of all the retirement benefits its members have earned based on the service they have already earned and actuarial projections about when they will retire and how long they will live in retirement. As of August 31, 2009, the market value of assets was \$4.41 billion less than the actuarial value.

Contributions to ERS are made by both the State and covered employees. The Texas Constitution mandates a State contribution rate of not less than 6% or more than 10% of payroll for the ERS; member contributions may not be less than six percent of payroll. The Legislature, however, may appropriate additional funds as are actuarially determined to be needed to fund benefits authorized by law. For the 2010 - 2011 biennium, the Legislature set the State's contribution rate to ERS at 6.45% of payroll. The member contribution rate to ERS is 6.45% for employees and 8% for legislators.

The ERS is prohibited by statute from implementing any benefit improvements that increase the actuarial cost of the ERS Plan if the period required to amortize the unfunded actuarial liability of the plan exceeds 31 years. As of August 31, 2009, the period required to amortize the unfunded actuarial liability of the Plan was estimated at 31 years.

In 2009, the 81<sup>st</sup> Session of the Texas Legislature passed H.B. 2559 which was signed into law on June 19, 2009 and contains a number of changes intended to improve the Plan's financial position to ensure the future soundness of the Plan. For State employees or retirees who were current contributing Plan members and were hired prior to September 1, 2009, H.B. 2559 does not change retirement eligibility or retirement calculations and protects most of their present benefits under the Plan. For State employees hired after September 1, 2009, H.B. 2559

contains provisions that, among other things, encourage State employees to work longer and prohibit new employees from using accrued sick and leave time to meet retirement eligibility requirements. H.B. 2559 also contains provisions changing the way that annuities for new employees will be calculated and changes vesting for retirement benefits for new employees. Additionally, all employees contributing to the Plan, regardless of their date of hire, will now contribute 6.45% (increased from 6.0%) and the State will contribute 6.45%. Prior to September 1, 2009, State employees had paid the same contribution rate since 1971. The State will also match State employee contributions up to 6.5%.

*Other Post-Employment Benefits...* The Department provides other post-employment benefits through the Texas Employees Group Benefits Program (“GBP”) administered by the ERS (the “OPEB Plan”), which is operated by the State and which covers State employees, elected officials, law enforcement and custodial officers, and judges. The GBP provides self-funded group health (medical and prescription drug) benefits for eligible retirees. An eligible retiree who has retired from full-time employment does not contribute toward the cost of coverage for himself/herself, but he/she pays a portion of the cost if he/she covers an eligible spouse or dependent child. An eligible retiree who has retired from part-time employment contributes toward the cost of coverage for himself/herself, as well as paying a portion of the cost if he/she covers an eligible spouse or dependent child. The GBP also provides life insurance benefits to eligible retirees via a minimum premium funding arrangement.

As of August 31, 2009, the ERS OPEB Plan had 230,285 active members, 10,672 deferred vested members and 83,494 retirees and nominees. The Department employs approximately 12,000 employees and, for fiscal year 2009, approximately \$148 million had been budgeted from the Fund to GBP for insurance benefits for certain Department employees. The Department makes monthly payments to GBP for virtually all of its employees. GBP does not account for each State Agency separately.

On an actuarial basis as of August 31, 2009, the ERS OPEB Plan’s unfunded actuarial accrued liability is \$21,992,000,000. OPEBs are paid for as on a pay-as-you go basis and are subject to appropriation by the State legislature.

### **Sunset Review**

In 1977, the Legislature enacted the Texas Sunset Act (Chapter 325, Texas Government Code)(the “Sunset Act”), which provides that virtually all agencies of the State, including the Department, are subject to periodic review by the Legislature and that each agency subject to sunset review will be abolished unless the Legislature specifically determines to continue its existence. The Department was subject to such sunset review in 2009 and was continued through September 1, 2011 (see below for information regarding the 81st Texas Legislature). Accordingly, the next scheduled review of the Department is during the Texas legislative session in 2011. If the Department is not continued in existence at that time, the Department will be abolished; provided, however, the Texas Sunset Act provides that the Department will remain in existence for an additional year (until September 1, 2012) for the sole purpose of concluding its business.

Pursuant to the Sunset Act, the Legislature specifically recognizes the State’s continuing obligation to pay bonded indebtedness and all other obligations incurred by the Department. Accordingly, in the event that a future sunset review were to result in the Department being abolished, the Governor would be required by law to designate an appropriate State Agency that would continue to carry out all covenants contained in the Bonds (and in all other obligations) and the performance of all other obligations to complete the construction of projects or the performance of other obligations of the Department, including lease, contract and other written obligations. The designated State Agency would provide payment from the sources of payment of the Bonds in accordance with the terms of the Bonds and would provide payment from the sources of payment of all other obligations in accordance with their terms, whether from taxes, revenues or otherwise, until the principal of and interest on the Bonds are paid in full and all other obligations, including lease, contract and other written obligations, are performed and paid in full. Moreover, amounts sufficient to pay debt service on the Bonds would be automatically appropriated pursuant to the Texas Constitution.

## **State Audit**

The State Auditor's Office ("SAO") is the independent auditor for Texas state government. The SAO operates with oversight from the Legislative Audit Committee, a six-member permanent standing committee of the Texas Legislature, jointly chaired by the Lieutenant Governor and the Speaker of the House of Representatives.

The SAO is authorized, by Chapter 321, Texas Government Code, to perform audits, reviews, and investigations of any entity receiving State funds, including State agencies and higher education institutions. Audits are performed in accordance with generally accepted government auditing standards, which include standards issued by the American Institute of Certified Public Accountants.

In connection with the State's Comprehensive Annual Financial Report, the SAO issued an audit report in March 2010 which included a discussion of the Department's statewide financial and federal compliance for fiscal year ended August 31, 2009. The SAO regularly audits State agencies that receive federal funds to ensure compliance with applicable federal requirements for the receipt of such funds. The SAO indicated the Department should strengthen certain aspects of its financial and information technology operations. The Department concurred with the recommendations of the SAO and has implemented corrective actions. State audit reports, including reports covering various aspects of the Department's performance, are available at <http://www.sao.state.tx.us>.

## **Gubernatorial Budget Reduction Request**

On January 15, 2010, Governor Rick Perry, Lieutenant Governor David Dewhurst and Speaker of the House Joe Straus issued a joint request to all executive, legislative, and judicial agencies of the State (individually, a "State Agency" and, collectively, the "State Agencies"), requesting that each State Agency submit a plan ("Savings Plan") to identify savings in priority increments totaling 5% of general revenue and general revenue-dedicated appropriations for the 2010-11 biennium. The request exempts (i) certain State programs and services and (ii) debt service payments on previously issued obligations. Appropriations from the Fund are not general revenue appropriations and therefore this budgetary request would not apply directly to the Fund.

With respect to the Department, such 5% reduction of general revenue and general revenue-dedicated appropriations equals approximately \$959,408 for the 2010-11 biennium. In order to achieve the requested reductions, on February 12, 2010, the Department submitted its Savings Plan recommending the reduction of the Department's General Obligation Debt Service Strategy by \$20,000,000. The Department is currently awaiting instructions from the Comptroller regarding the procedures for transferring the fiscal year 2011 appropriations savings to a reduction account. However, the Department does not expect the budget reductions to adversely affect the Department's operations or financial condition.

On May 27, 2010, the Governor, the Lieutenant Governor and the Speaker of the House issued a letter directing the process by which each State Agency will develop its legislative appropriations request for the 2012-2013 biennial budget. The letter also directs agencies to submit a supplemental schedule detailing how they would reduce their baseline request by an additional 10% (in 5% increments) in general revenue-related funding. Exceptions to the baseline request limitation include amounts necessary to satisfy debt service requirements for bond authorizations. The Department is currently analyzing how to respond to the request, but does not expect these potential budget reductions to have a material adverse effect on the Department or its operations for the 2012-13 biennium.

## **Estimated 2012-2013 Budget Deficit**

On May 11, 2010, the Assistant Director of the State's Legislative Budget Board reported to the Texas House Appropriations Committee that the current estimated gap between expected expenditures and available general revenue funds is \$15 to \$18 billion in fiscal years 2012 and 2013. The Governor has questioned this estimation, and further review by the State is necessary before a final estimate can be reached. The Texas Constitution requires that Texas maintain a balanced budget.

Article III, Section 49-g of the State Constitution establishes the Economic Stabilization ("rainy day") Fund which can be used to help balance the State's budget. If an estimate of anticipated revenues for a succeeding

biennium prepared by the State Comptroller is less than the revenues that are estimated at the same time by the Comptroller to be available for the current biennium, the Legislature may, by a three-fifths vote of the members present in each house, appropriate for the succeeding biennium from the Economic Stabilization Fund an amount not to exceed this difference. In addition to such appropriation authority, the State Legislature may, by a two-thirds vote of the members present in each house, appropriate amounts from the Economic Stabilization Fund at any time and for any purpose. In her Biennial Revenue Estimate for 2010-2011 (published in January 2009), the State Comptroller estimated that the ending balance in such fund would be approximately \$9 billion at the end of fiscal year 2011. No assurances can be given as to whether the State Legislature will appropriate all or a portion of the Economic Stabilization Fund or as to what type of savings plan or other actions the Texas Legislature may take during the 2011 Legislative Session to balance the budget.

## **INVESTMENT CONSIDERATIONS**

*The Commission's ability to pay principal of and interest on the Bonds depends upon numerous factors, many of which are not subject to the control of the Commission or the Department. Described below are certain factors that could materially adversely affect the ability of the Commission to pay debt service on the Bonds.*

### **Limited Obligations**

The Bonds are limited obligations of the Commission, payable from and secured by a lien on, pledge of and security interest in the Pledged Revenues on an equal and ratable basis with the outstanding First Tier Senior Obligations and any additional First Tier Senior Obligations issued in the future in accordance with the provisions of the Resolution. Neither the State, the Commission, the Department, nor any other agency or political subdivision of the State is obligated to pay the principal of, premium, if any, or interest on the Bonds except from the Pledged Revenues and certain funds created under the Resolution. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof is pledged to the payment of the principal of, premium, if any, or interest on the Bonds. The Commission and the Department have no taxing power. See "THE BONDS - Source of Payment for Bonds" and APPENDIX A - "DEFINITIONS AND EXCERPTED PROVISIONS OF THE RESOLUTION" for a further discussion of limitations as to the source for payment of the Bonds.

### **External Conditions Affecting Pledged Revenues**

A significant portion of the Pledged Revenues is dependent on a number of economic, demographic and environmental factors. A significant portion of such Pledged Revenues is comprised of revenues from federal and State motor fuel taxes and State motor vehicle registration fees, which may fluctuate based on, among other things, the condition of the State and national economies, population growth, income and employment levels, levels of tourism, weather conditions, environmental regulation (including adverse impacts resulting from designation of large population centers within the State as non-attainment areas that do not meet federal Clean Air Act standards), fuel prices, road conditions, the availability of alternate modes of transportation and the development of alternative fuel vehicles and more fuel efficient vehicles. There can be no assurance that downturns in any of the numerous factors affecting these revenues will not significantly affect the future level of Pledged Revenues. See "GENERAL INFORMATION REGARDING THE STATE OF TEXAS" for reference to certain economic and demographic information that relates to some of these factors.

### **Factors Affecting Federal Transportation Program Funds**

The federal transportation program funds to be deposited into the Fund have historically been authorized under multiple-year authorizing legislation. Congress passed SAFETEA-LU on July 29, 2005, a multi-year extension through September 30, 2009, which was signed into law by the President on August 10, 2005. SAFETEA-LU replaced the previous six-year authorizing legislation which expired on September 30, 2003. SAFETEA-LU also reauthorized the collection of federal gasoline excise taxes and other taxes generating revenues to the HTF through the federal fiscal year ending September 30, 2011. Congress, through a series of extensions, has extended the requirements, authorities, conditions, eligibilities, limitations and other provisions under SAFETEA-LU through December 31, 2010 and Congress now has until that time to pass another extension or pass a multi-year surface transportation reauthorization bill. See "APPENDIX C - INFORMATION CONCERNING THE

FUNDING OF FEDERAL-AID HIGHWAYS – Lapsing of Authorization” for more information on the extension of SAFETEA-LU.

SAFETEA-LU contains certain provisions designed to provide continuity in the flow of federal transportation program funds to the states, including the State. There can be no assurances that such measures will be continued under any future federal reauthorization or that, if continued, such measures will be sufficient to ensure that federal transportation program funds will be available as needed if in the future Congress amends existing laws or fails to reauthorize expired transportation legislation, or if future legislation or federal administrative action reduces the amount of federal transportation program funds available to the Commission. SAFETEA-LU has been subject to federal rescission of funds enacted by federal law in federal fiscal years 2007 through 2009 which reduced funding under SAFETEA-LU by approximately \$19.3 billion. Texas’ share of such rescissions was \$360,834,408, \$257,989,173, and \$1,014,643,500 for federal fiscal years 2007, 2008 and 2009, respectively; provided, however, that in February 2010, Congress passed HR2847, which restored \$8.7 billion of the authorization rescinded in 2009, including \$742,240,415 of the State’s share of such rescinded authorization. See “APPENDIX C - INFORMATION CONCERNING THE FUNDING OF FEDERAL-AID HIGHWAYS - Rescissions”.

There can be no assurances that there will not be future federal rescission of funds or other changes in law, regulation, policy, or the availability of revenues at the federal level which may materially adversely affect the future availability of federal transportation program funds. See “THE STATE HIGHWAY FUND - Sources of Revenue in the Fund - Federal Funds” and APPENDIX C - “INFORMATION CONCERNING THE FUNDING OF FEDERAL-AID HIGHWAYS.”

### **Potential Legislative Changes to Pledged Revenues**

Although Section 49-n provides that the dedication or appropriation of revenue to the credit of the Fund may not be modified so as to impair any outstanding bonds (including the Bonds) or other public securities secured by a pledge of revenues in the Fund unless provisions have been made for a full discharge of such securities, the extent to which this provision proscribes the authority of the Legislature to alter or otherwise redirect revenues currently deposited into the Fund is unclear. In any case, Section 49-n prevents the Legislature from altering or otherwise redirecting those revenues currently deposited into the Fund pursuant to constitutional provision in a manner that would prevent the payment of debt service on the Bonds and any additional Senior Obligations.

In the 1998-1999 biennium, the Legislature, for State budget balancing purposes, delayed until fiscal year 2000 the deposit and recognition of two months (i.e., \$336.8 million) of State motor fuels tax revenues that normally would have been deposited in the Fund and recognized in fiscal year 1999. While this action of the Legislature occurred prior to the adoption of Section 49-n, when no Senior Obligations were outstanding and while such revenues were ultimately deposited into the Fund, there can be no assurances that the Legislature will not attempt to delay the deposit and recognition of all or a portion of revenues to the credit of the Fund for some period of time. The Commission has been granted the authority to issue certain obligations for cash flow management purposes which could be utilized to mitigate the effect of any similar future action. See “THE STATE HIGHWAY FUND - Subordinate Obligations - Cash Flow Financing Programs.”

### **Appropriations from the Fund**

Section 7-a provides that the revenues dedicated by such provision to the Fund shall be used, in part, for the policing of public roadways and for the administration of such laws pertaining to the supervision of traffic and safety on such roads. Pursuant to such authority, the Legislature appropriates moneys from the Fund to fund certain costs of DPS, the state police of the State. For fiscal years 2008 and 2009, \$658.3 million and \$619.8 million, respectively, has been appropriated from the Fund to DPS. While the Bonds have a prior lien and security interest on the Fund, under certain circumstances, State law may be interpreted to allow the State to impair the obligation of contracts in a valid exercise of the State’s inherent police powers. Assuming the application of such law, there can be no assurances given as to the enforceability of any lien or security interest on the Fund created by the Texas Constitution, statute or the Resolution in favor of the Bonds which might impair or impede any current or future appropriation from the Fund for DPS.

The Legislature has directed certain non-Dedicated Revenue sources from the Fund to pay a portion of the costs of the Texas Emissions Reduction Plan, beginning in fiscal year 2009 through fiscal year 2015. For fiscal years 2009 through 2015, the Department estimates the annual payment from the Fund to the Texas Emissions Reduction Plan to be \$96.4 million increasing to \$112 million. In addition, the Legislature has appropriated monies from the Fund for various smaller programs. For fiscal years 2008 and 2009, \$212.3 million and \$212.6 million, respectively, has been appropriated from the Fund to the other smaller programs. There can be no assurances that the Legislature will not increase or extend such funding requirements or otherwise appropriate monies from the non-Dedicated Revenue portion of the Fund to other purposes.

### **Additional Obligations**

In addition to the outstanding Previously Issued First Tier Senior Obligations and the Bonds, the Resolution permits the issuance of additional Senior Obligations and Subordinate Obligations secured by or payable from the Pledged Revenues. The Commission also has a number of other non-debt Subordinate Obligations which are payable from the Fund, including certain toll equity agreements, pass-through toll agreements and other obligations. The Commission expects to enter into additional Senior Obligations and Subordinate Obligations in the future. See “THE BONDS - Outstanding and Additional Senior Obligations and Tiers of Senior Obligations,” “-Issuance of Subordinate Obligations,” “THE STATE HIGHWAY FUND - General,” “- Uses of the Fund” and “-Subordinate Obligations.”

### **Forward-Looking Statements**

The statements contained in this Official Statement, and in any other information provided by the Commission or the Department, that are not purely historical, are forward-looking statements, including statements regarding the Commission’s expectations, hopes, intentions, or strategies regarding the future. Readers should not place undue reliance on forward-looking statements. All forward-looking statements included in this Official Statement are based on information available to the Commission or the Department on the date hereof, and neither the Commission or the Department assume any obligation to update any such forward-looking statements except as may be required in its continuing disclosure agreement. The Commission’s actual results could differ materially from those discussed in such forward-looking statements.

The forward-looking statements included herein are necessarily based on various assumptions and estimates and are inherent subject to various risks and uncertainties, including risks and uncertainties relating to the possible invalidity of the underlying assumptions and estimates and possible changes or developments in social, economic, business, industry, market, legal, regulatory circumstances and conditions and actions taken or omitted to be taken by third parties, including customers, suppliers, business partners and competitors, and legislative, judicial, and other governmental authorities and officials. Assumptions related to the foregoing involve judgments with respect to, among other things, future economic, competitive, and market conditions of future business decisions, all of which are difficult or impossible to predict accurately and many of which are beyond the control of the Commission. Any of such assumptions could be inaccurate and, therefore, there can be no assurances that the forward-looking statements included in this Official Statement will prove to be accurate.

### **GENERAL INFORMATION REGARDING THE STATE OF TEXAS**

The Comptroller prepares a quarterly appendix (the “Bond Appendix”) which sets forth certain information regarding the State including its government, finances, economic profile, and other matters for use by State entities when issuing debt. The most recent Bond Appendix is dated May 2010 and may be obtained (i) using the Municipal Securities Rulemaking Board’s (the “MSRB”) internet website, [www.emma.msrb.org](http://www.emma.msrb.org), by using the muni search function and entering the term “State of Texas Comptroller” and (ii) from the Comptroller’s website at: <http://www.window.state.tx.us/treasops/bondapp.html> and will be updated from time to time by the Comptroller.

**THE BOND APPENDIX IS FOR THE SOLE PURPOSE OF PROVIDING ECONOMIC AND DEMOGRAPHIC INFORMATION RELATING TO THE STATE. NEITHER THE STATE, NOR ANY AGENCY, POLITICAL CORPORATION, OR POLITICAL SUBDIVISION OF THE STATE IS OBLIGATED TO PAY THE PRINCIPAL OF OR INTEREST ON THE BONDS, OTHER THAN AS PROVIDED IN THE RESOLUTION. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER**

**OF THE STATE IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE BONDS.**

**RATINGS**

The Bonds and the Previously Issued First Tier Senior Obligations are rated “AAA” and “Aaa” by Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, and Moody’s Investors Service, Inc. An explanation of the significance of the ratings may be obtained from each respective rating agency. The ratings reflect only the respective views of such organizations at the time the ratings were given, and the Commission makes no representation as to the appropriateness of the ratings. There is no assurance that such ratings will continue for any given period of time or that they will not be revised downward or withdrawn entirely by either or both of such rating companies if, in the judgment of either or both of such companies, circumstances so warrant. Any such downward revision or withdrawal of a rating may have an adverse effect on the market price of the Bonds.

**TAX MATTERS**

**General**

The following is a general summary of United States federal income tax consequences of the purchase and ownership of the Bonds. The discussion is based upon laws, Treasury Regulations, rulings and decisions now in effect, all of which are subject to change (possibly with retroactive effect) or possibly differing interpretations. No assurances can be given that future changes in the law will not alter the conclusions reached herein. The discussion below does not purport to deal with United States federal income tax consequences applicable to all categories of investors. Further, this summary does not discuss all aspects of United States federal income taxation that may be relevant to a particular investor in the Bonds in light of the investor’s particular personal investment circumstances or to certain types of investors subject to special treatment under United States federal income tax laws (including insurance companies, tax exempt organizations, financial institutions, broker-dealers, and persons who have hedged the risk of owning the Bonds). The summary is therefore limited to certain issues relating to initial investors who will hold the Bonds as “capital assets” within the meaning of section 1221 of the Code, and acquire such Bonds for investment and not as a dealer or for resale. This summary addresses certain federal income tax consequences applicable to beneficial owners of the Bonds who are United States persons within the meaning of section 7701(a)(30) of the Code (“United States persons”) and certain federal income tax consequences to persons other than United States persons. Prospective investors should note that no rulings have been or will be sought from the IRS with respect to any of the U.S. federal income tax consequences discussed below, and the discussion below is not binding on the Service.

**INVESTORS SHOULD CONSULT THEIR OWN TAX ADVISORS IN DETERMINING THE FEDERAL, STATE, LOCAL, FOREIGN AND ANY OTHER TAX CONSEQUENCES TO THEM FROM THE PURCHASE, OWNERSHIP AND DISPOSITION OF THE BONDS.**

**Internal Revenue Service Circular 230 Notice**

You should be aware that:

- (i) the discussion with respect to United States federal tax matters in this Official Statement was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer;
- (ii) such discussion was written to support the promotion or marketing (within the meaning of IRS Circular 230) of the transactions or matters addressed by such discussion; and
- (iii) each taxpayer should seek advice based on his or her particular circumstances from an independent tax advisor.

This notice is given solely for purposes of ensuring compliance with IRS Circular 230.

## **U.S. Holders**

The following summary applies to holders of Bonds who or which are U.S. holders (as defined below).

**Definition of a U.S. Holder.** A “U.S. holder” is a beneficial owner of a Bond or Bonds who or which is for U.S. federal income tax purposes, (a) an individual citizen or resident of the United States; (b) a corporation (or other entity classified as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States, any of its states or the District of Columbia; (c) an estate, the income of which is subject to U.S. federal income taxation regardless of the source of that income; or (d) a trust, if, in general, a U.S. court is able to exercise primary supervision over the trust’s administration and one or more United States persons (within the meaning of the Internal Revenue Code) have the authority to control all of the trust’s substantial decisions, or the trust has a valid election in effect under applicable Treasury regulations to be treated as a United States person.

If a partnership (or other entity classified as a partnership for U.S. federal income tax purposes) is a beneficial owner of Bonds, the treatment of a partner in the partnership will generally depend upon the status of the partner and on the activities of the partnership. Holders of Bonds that are a partnership or partners in such partnership are urged to consult their own tax advisors regarding the U.S. federal income tax consequences of purchasing, owning and disposing of the Bonds.

## **Stated Interest on the Bonds**

The stated interest on the Bonds will be included in the gross income, as defined in section 61 of the Code, of the beneficial owners thereof and be subject to U.S. federal income taxation when paid or accrued, depending on the tax accounting method applicable to the beneficial owners thereof.

## **Disposition of Bonds**

A beneficial owner of Bonds will generally recognize gain or loss on the redemption, sale or exchange of a Bond equal to the difference between the redemption or sales price (exclusive of the amount paid for accrued interest) and the beneficial owner’s adjusted tax basis in the Bond. Generally, the beneficial owner’s adjusted tax basis in a Bond will be the beneficial owner’s initial cost, increased by any original issue discount previously included in the beneficial owner’s income to the date of disposition and reduced by any amortized bond premium. Any gain or loss generally will be capital gain or loss and will be long-term or short-term, depending on the beneficial owner’s holding period for the Bond.

## **Backup Withholding**

Under section 3406 of the Code, a beneficial owner of the Bonds who is a United States person, as defined in section 7701(a)(30) of the Code, may, under certain circumstances, be subject to “backup withholding” with respect to current or accrued interest on the Bonds or with respect to proceeds received from a disposition of Bonds. This withholding applies if such beneficial owner of Bonds: (i) fails to furnish to the payor such beneficial owner’s social security number or other taxpayer identification number (“TIN”); (ii) furnishes the payor an incorrect TIN; (iii) fails to report properly interest, dividends, or other “reportable payments” as defined in the Code; or (iv) under certain circumstances, fails to provide the payor with a certified statement, signed under penalty of perjury, that the TIN provided to the payor is correct and that such beneficial owner is not subject to backup withholding.

Backup withholding will not apply, however, with respect to payments made to certain beneficial owners of the Bonds. Beneficial owners of the Bonds should consult their own tax advisors regarding their qualification for exemption from backup withholding and the procedures for obtaining such exemption.

## **Reporting of Interest Payments**

Subject to certain exceptions, interest payments made to beneficial owners with respect to Bonds will be reported to the IRS. Such information will be filed each year with the Service on Form 1099 which will reflect the name, address, and TIN of the beneficial owner. A copy of Form 1099 will be sent to each beneficial owner of a Bond for U.S. federal income tax purposes.

## Non-U.S. Holders

The following summary applies to holders of Bonds who or which are not U.S. holders (as defined above) and are not a partnership (including an entity treated as a partnership for U.S. federal income tax purposes). An individual may, subject to exceptions, be deemed to be a resident alien, as opposed to a non-resident alien, by, among other ways, being present in the United States (a) on at least 31 days in the calendar year, and (b) for an aggregate of at least 183 days during a three-year period ending in the current calendar year, counting for these purposes all of the days present in the current year, one-third of the days present in the immediately preceding year and one-sixth of the days present in the second preceding year.

Resident aliens are subject to U.S. federal income tax as if they were U.S. citizens.

**U.S. Federal Income Tax.** Except for the possible application of U.S. federal withholding tax (as described immediately above) and backup withholding tax (see “Backup Withholding and Information Reporting” below), a non-U.S. Holder of a Bonds generally will not have to pay U.S. federal income tax on payments of interest on such Bonds, or on any gain or income realized from the sale, redemption, retirement at maturity or other taxable disposition of such Bonds (subject to, in the case of proceeds representing accrued interest, the conditions described in “U.S. Federal Withholding Tax” immediately above) unless (a) in the case of gain, such Holder is an individual who is present in the United States for 183 days or more during the taxable year of the sale or other taxable disposition of the Bonds held by such Holder and specific other conditions are present; or (b) the income or gain is effectively connected with such Holder’s conduct of a U.S. trade or business, and, if a U.S. income tax treaty applies, is attributable to a U.S. “permanent establishment” maintained by such Holder.

If such Holder is described in subparagraph (a) above, such Holder will be subject to a flat 30% tax (unless a lower applicable income tax treaty rate applies) on the gain realized on the sale, redemption, retirement at maturity or other taxable disposition, and such gain may be offset by U.S. source capital losses, even though such Holder is not considered a resident of the United States. If such Holder is engaged in a trade or business in the United States and interest, gain or any other income attributable to the Bonds owned by such Holder is effectively connected with the conduct of such Holder’s trade or business, and, if a U.S. income tax treaty applies, such Holder maintains a U.S. “permanent establishment” to which the interest, gain or other income is generally attributable, such Holder generally will be subject to U.S. income tax on a net income basis on such interest, gain or income. In this instance, however, the interest on the Bonds held by such Holder will be exempt from the 30% U.S. withholding tax discussed immediately above under “U.S. Federal Withholding Tax” if such Holder provides a properly executed IRS Form W-8ECI or appropriate substitute form on or before any payment date to claim the exemption.

In addition, if such Holder is a foreign corporation, such Holder may be subject to a U.S. branch profits tax equal to 30% of the Holder’s effectively connected earnings and profits for the taxable year, as adjusted for certain items, unless a lower rate applies to such Holder under a U.S. income tax treaty with such Holder’s country of residence. For this purpose, such Holder must include interest and gain on the Bonds in the earnings and profits subject to the U.S. branch profits tax if these amounts are effectively connected with the conduct of such Holder’s U.S. trade or business.

**Backup Withholding and Information Reporting.** Payments of interest on the Bonds, and amounts of tax withheld from such payments, if any, generally will be required to be reported to the U.S. Internal Revenue Service and to such Holder. Backup withholding will not apply to payments made to such Holder who or which has provided the required certification that regarding a non-U.S. holder as described in “U.S. Federal Withholding Tax” above, and if no actual knowledge or reason exists with the Commission or the Paying Agent that such Holder is a U.S. holder (as described in “— U.S. Holders — Definition of a U.S. Holder” above).

The gross proceeds from the disposition of the Bonds may be subject to information reporting and backup withholding. If a Non-U.S. Holder sells the Bonds held by such Holder outside the United States through a non-U.S. office of a non-U.S. broker and the sales proceeds are paid to such Holder outside the United States, then the U.S. backup withholding and information reporting requirements generally will not apply to such payment. However, U.S. information reporting, but not backup withholding, will apply to a payment of sales proceeds, even if that payment is made outside the United States, if such Non-U.S. Holder sells Bonds through a non-U.S. office of a broker that is (a) a United States person (as defined in the Internal Revenue Code); (b) a foreign person that derives

50% or more of its gross income in specific periods from the conduct of a trade or business in the United States; (c) a “controlled foreign corporation” for U.S. federal income tax purposes; or (d) a foreign partnership that, at any time during its taxable year, has more than 50% of its income or capital interests owned by United States persons or is engaged in the conduct of a U.S. trade or business; unless the broker has documentary evidence in its files that such Holder is not a United States person and certain other conditions are met or such Holder otherwise establishes an exemption. If a Holder receives payments of the proceeds of a sale of such Holder’s Bonds to or through a U.S. office of a broker, the payment is subject to both U.S. backup withholding and information reporting unless such Holder provides an IRS Form W-8BEN certifying that such Holder is not a United States person or otherwise meets an exemption.

Non-U.S. Holders are urged to consult their own tax advisor regarding application of backup withholding applicable to the particular circumstances of such Non-U.S. Holder and the availability of and procedure for obtaining an exemption from backup withholding under current Treasury Regulations. Any amounts withheld under the backup withholding rules from a payment to a Non-U.S. Holder will be allowed as a refund or credit against the Non-U.S. Holder’s U.S. federal income tax liability, provided that the required information is timely furnished to the Internal Revenue Service.

### **New Legislation**

For taxable years beginning after December 31, 2012, newly enacted legislation is scheduled to impose a 3.8% tax on the “net investment income” of certain U.S. citizens and resident aliens, and on the undistributed “net investment income” of certain estates and trusts. Among other items, “net investment income” would generally include gross income from interest, less certain deductions.

All holders of the Bonds should consult their own tax advisors with respect to the tax consequences of the new legislation described above and its application to the Bonds.

## **THE BONDS AS LEGAL INVESTMENTS IN TEXAS**

Section 1201.041 of the Public Security Procedures Act (Chapter 1201, Texas Government Code) provides that the Bonds are negotiable instruments, investment securities governed by Chapter 8, Texas Business & Commerce Code, and are legal and authorized investments for insurance companies, fiduciaries, and trustees, and for the sinking funds of municipalities or other political subdivisions or public agencies of the State. In addition, various provisions of the Texas Finance Code provide that, subject to a prudent investor standard, the Bonds are legal investments for State banks, savings banks, trust companies with at least \$1 million of capital, and savings and loan associations. The Bonds are eligible to secure deposits of any public funds of the State, its agencies and political subdivisions, and are legal security for those deposits to the extent of their market value. For political subdivisions in Texas which have adopted investment policies and guidelines in accordance with the PFIA, the Bonds may have to be assigned a rating of at least “A” or its equivalent as to the investment quality by a national rating agency before the Bonds are eligible investments for sinking funds or other public funds of such political subdivisions.

No representation is made that the Bonds will be acceptable to public entities to secure their deposits or acceptable to such institutions for investment purposes. The Commission has made no investigation of other laws, rules, regulations, or investment criteria which might apply to any such persons or entities or which might otherwise limit the suitability of the Bonds for any of the foregoing purposes or limit the authority of such persons or entities to purchase or invest in the Bonds for such purposes. The Commission has not made any review of laws in other states to determine whether the Bonds are legal investments for various institutions in those states.

## **LITIGATION**

There is no litigation, proceeding, inquiry, or investigation pending by or before any court or other governmental authority or entity of which the Commission or the Department has notice and, to the knowledge of the Commission and the Department after due and reasonable inquiry, there is no such litigation, proceeding, inquiry, or investigation otherwise pending or threatened against or affecting the State or any of its agencies or instrumentalities that (i) affects the existence of the Department or the Commission or the right of the present

members of the Commission and officers of the Department to hold their offices, (ii) affects the validity or enforceability of the provisions pursuant to which the Bonds are being issued, and (iii) would have a material adverse effect upon (A) the power of the Commission to issue the Bonds, or (B) the Fund.

## CONTINUING DISCLOSURE OF INFORMATION

### Continuing Disclosure Undertaking of the Commission

**General.** In the Fifth Supplemental Resolution, the Commission has made the following agreement for the benefit of the Owners and Beneficial Owners of the Bonds. The Commission is required to observe the agreement for so long as it remains obligated to advance funds to pay the Bonds. Under the agreement, the Commission will be obligated to provide certain updated financial information and operating data annually, and timely notice of specified material events, to the MSRB. The information will be available to investors by the MSRB through its EMMA system, free of charge at [www.emma.msrb.org](http://www.emma.msrb.org).

**Annual Reports.** The Commission will provide certain updated financial information and operating data to the MSRB on an annual basis. The information to be updated includes Tables 1 through 12 and the unaudited financial statements of the Department, excerpts from which are contained in APPENDIX B hereto. The Commission will update and provide this information within six months after the end of each Fiscal Year ending in and after 2010.

The financial information and operating data to be provided may be set forth in full in one or more documents or may be included by specific reference to any document available to the public on the MSRB's Internet Web site or filed with the Securities and Exchange Commission (the "SEC"), as permitted by SEC Rule 15c2-12 (the "Rule"). The updated information will include audited financial statements, if the Commission commissions an audit and it is completed by the required time. However, the Commission does not intend (and its continuing disclosure undertaking should not be construed as a commitment by the Commission) to commission any audit of the Department's financial statements. If the audited financial information is not available by the required time, the Commission will provide unaudited financial information by the date required. In the event that the Commission does elect to commission an audit of the Department's financial statements, the Commission shall provide such audited financial statements for the applicable Fiscal Year to the MSRB, when and if such audit report on such statements becomes available. Any such financial statements will be prepared in accordance with generally accepted accounting principles for governmental entities or such other accounting principles as the Commission may be required to employ from time to time pursuant to State law or regulation.

The Commission's current Fiscal Year end is August 31. Accordingly, it must provide updated information within six months thereof unless the Commission changes its Fiscal Year. If the Commission changes its Fiscal Year, it will notify the MSRB of the change (and of the date of the new Fiscal Year end) prior to the next date by which the Commission otherwise would be required to provide financial information and operating data pursuant to its continuing disclosure agreement.

**Material Event Notices.** The Commission will also provide timely notices of certain events to the MSRB. The Commission will provide notice of any of the following events with respect to the Bonds, if such event is material to a decision to purchase or sell the Bonds: (i) principal and interest payment delinquencies; (ii) non-payment related defaults; (iii) unscheduled draws on debt service reserves reflecting financial difficulties; (iv) unscheduled draws on credit enhancements reflecting financial difficulties; (v) substitution of credit or liquidity providers, or their failure to perform; (vi) adverse tax opinions or events affecting the tax-exempt status of the Bonds; (vii) modifications to rights of holders of the Bonds; (viii) Bond calls; (ix) defeasances; (x) release, substitution, or sale of property securing repayment of the Bonds; and (xi) rating changes. In addition, the Commission will provide timely notice of any failure by the Commission to provide information, data, or financial statements in accordance with its agreement described above under "– Continuing Disclosure Undertaking of the Commission - Annual Reports."

Should the Rule be amended to obligate the Commission make filings with or provide notices to entities other than the MSRB, the Commission has agreed to undertake such obligation with respect to the Bonds in accordance with the Rule as amended.

## **Availability of Information**

The Commission has agreed to provide the foregoing financial and operating information only as described above. The Commission will be required to file the foregoing continuing disclosure information using the MSRB's EMMA system. Investors will be able to access continuing disclosure information filed with the MSRB free of charge at [www.emma.msrb.org](http://www.emma.msrb.org).

## **Limitations and Amendments**

The Commission has agreed to update information and to provide notices of material events only as described above. The Commission has not agreed to provide other information that may be relevant or material to a complete presentation of the Commission's financial results of operations, condition, or prospects or agreed to update any information that is provided, except as described above. The Commission makes no representation or warranty concerning such information or concerning its usefulness to a decision to invest in or sell Bonds at any future date. The Commission disclaims any contractual or tort liability for damages resulting in whole or in part from any breach of its continuing disclosure agreement or from any statement made pursuant to such agreement, although holders of Bonds may seek a writ of mandamus to compel the Commission to comply with its agreements.

The Commission may amend its continuing disclosure agreement to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Commission if the agreement, as amended, would have permitted an underwriter to purchase or sell Bonds in the offering described herein in compliance with the Rule and either the holders of a majority in aggregate principal amount of the outstanding Bonds consent or any person unaffiliated with the Commission (such as nationally recognized bond counsel) determines that the amendment will not materially impair the interests of the beneficial owners of the Bonds. If the Commission so amends its agreement, the Commission must include with the next financial information and operating data provided in accordance with its agreement described above under "Annual Reports" an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of information and data provided. The Commission may also amend or repeal the provisions of this continuing disclosure requirement if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction enters judgment that such provisions of the Rule are invalid, but only if and to the extent that the provisions of this sentence would not prevent an underwriter from lawfully purchasing or selling the Bonds in the primary offering of the Bonds.

## **Compliance with Prior Undertakings**

During the last five years, the Commission has complied in all material respects with its continuing disclosure agreements to which it is a party in accordance with the Rule.

## **UNDERWRITING**

Goldman, Sachs & Co., as representative of the Underwriters set forth on the cover of this Official Statement, has agreed, subject to certain conditions set forth in a bond purchase agreement with the Commission, to purchase the Bonds at a price of \$1,492,005,000 (which represents the par amount of the Bonds less an underwriting discount of \$7,995,000). The bond purchase agreement pertaining to the Bonds provides that the Underwriters will purchase all of the Bonds if any are purchased. The Bonds to be offered to the public may be offered and sold to certain dealers (including the Underwriters and other dealers depositing Bonds into investment trusts) at prices lower than the public offering prices of the Bonds and such public offering prices may be changed, from time to time, by the Underwriters.

The Underwriters have provided the following sentence for inclusion in this Official Statement. The Underwriters have reviewed the information in this Official Statement in accordance with, and as part of, their respective responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

Piper Jaffray & Co. ("Piper"), one of the underwriters of the Bonds, has entered into an agreement (the "Distribution Agreement") with Advisors Asset Management, Inc. ("AAM") for the distribution of certain municipal

securities offerings, including the Bonds, allocated to Piper at the original offering prices. Under the Distribution Agreement, Piper will share with AAM a portion of the fee or commissions, exclusive of management fees, paid to Piper.

### **FINANCIAL ADVISOR**

RBC Capital Markets Corporation has contracted to serve as Financial Advisor to the Commission in connection with the issuance of the Bonds.

Although the Financial Advisor has read and participated in the preparation of this Official Statement, it has not independently verified any of the information set forth herein. The information contained in this Official Statement has been obtained primarily from the Commission's and the Department's records and from other sources which are believed to be reliable. No guarantee is made as to the accuracy or completeness of any such information. No person, therefore, is entitled to rely upon the participation of the Financial Advisor as an implicit or explicit expression of opinion as to the completeness and accuracy of the information contained in this Official Statement.

### **REGISTRATION AND QUALIFICATION OF BONDS FOR SALE**

The sale of the Bonds has not been registered under the Federal Securities Act of 1933 (15 U.S.C. 77a, et seq.), as amended, in reliance upon the exemption provided thereunder by Section 3(a)(2), and the Bonds have not been qualified under the Securities Act of Texas in reliance upon various exemptions contained therein. Furthermore, the Bonds have not been qualified under the securities acts of any other jurisdiction (domestic or foreign).

The Commission assumes no responsibility for qualification of the Bonds under the securities laws of any jurisdiction (domestic or foreign) in which the Bonds may be sold, assigned, pledged, hypothecated or otherwise transferred.

This disclaimer of responsibility for qualification for sale or other disposition of the Bonds shall not be construed as an interpretation of any kind with regard to the availability of any exemption from securities registration or similar provisions.

### **LEGAL MATTERS**

Legal matters incident to the authorization, issuance, and sale of the Bonds by the Commission are subject to the unqualified approving opinion of the Attorney General of the State and the approval of certain legal matters by Andrews Kurth LLP, Austin, Texas, Bond Counsel. The compensation paid to Bond Counsel for services rendered in connection with the issuance of the Bonds is contingent on the delivery of the Bonds. Bond Counsel's approving opinion will be rendered in substantially the form attached to this Official Statement as APPENDIX D.

The Commission will furnish to the Underwriters a complete transcript of proceedings incident to the authorization and issuance of the Bonds, including the favorable legal opinion of the Attorney General of the State of Texas to the effect that the Bonds are valid and legally binding obligations of the Commission and, based upon examination of such transcript of proceedings, the approving legal opinion to like effect of Andrews Kurth LLP as Bond Counsel. Bond Counsel was not requested to participate, and did not take part, in the preparation of this Official Statement, and such firm has not assumed any responsibility with respect hereto or undertaken independently to verify any of the information contained herein, except that in its capacity as Bond Counsel, such firm has reviewed the information in this Official Statement under the captions and subcaptions "THE BONDS" (except for the information contained under the subcaption "Bondowners' Remedies"), "DESCRIPTION OF THE TRANSACTION DOCUMENTS", "STATE HIGHWAY FUND – Investment Authority and Investment Practices for the Funds," "TAX MATTERS", "THE BONDS AS LEGAL INVESTMENTS IN TEXAS", "CONTINUING DISCLOSURE OF INFORMATION" (except for the information contained under the subcaption "Compliance with Prior Undertakings"), "REGISTRATION AND QUALIFICATION OF BONDS FOR SALE", "LEGAL MATTERS" and APPENDIX A - "DEFINITIONS AND EXCERPTED PROVISIONS OF THE RESOLUTION" to verify that the information relating to the Bonds and the Transaction Documents contained under such captions and subcaptions in all respects accurately and fairly reflects the provisions thereof and, insofar as such information

relates to matters of law, is true and accurate. In connection with the transactions described herein, Bond Counsel and Fulbright & Jaworski L.L.P., Dallas, Texas, Disclosure Counsel, represent only the Commission. The legal opinion of Bond Counsel in the form set forth in APPENDIX D will accompany the Bonds deposited with DTC. Certain legal matters will be passed upon for the Commission by Disclosure Counsel and the General Counsel of the Commission. Certain legal matters will be passed upon for the Underwriters by their co-counsel, Locke Lord Bissell & Liddell LLP, Dallas, Texas and Mahomes Bolden & Warren PC, Dallas, Texas, whose legal fees are contingent on the sale and delivery of the Bonds.

The various legal opinions to be delivered concurrently with the delivery of the Bonds express the professional judgment of the attorneys rendering the opinions as to the legal issues explicitly addressed therein. In rendering a legal opinion, the attorney does not become an insurer or guarantor of the transaction opined upon or of the future performance of the parties to the transaction. Nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction.

#### MISCELLANEOUS

References in this Official Statement to particular laws do not purport to be a complete statement or to describe all of the provisions thereof and in each case are qualified by reference to the entire law, a copy of which will be furnished by the Commission on request.

The Commission has approved this Official Statement and authorized its further use in the reoffering of the Bonds by the Underwriters.

TEXAS TRANSPORTATION COMMISSION

By: /s/ James M. Bass

Chief Financial Officer  
Texas Department of Transportation

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**Appendix A**

**Definitions and Excerpted Provisions of the Resolution**

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## DEFINITIONS AND EXCERPTED PROVISIONS OF THE RESOLUTION

The following are excerpts of certain provisions of the Master Resolution, as amended, and the Fifth Supplemental Resolution. Such excerpts do not purport to be complete or verbatim and reference should be made to the Master Resolution and the Fifth Supplemental Resolution, respectively, for the entirety thereof. Copies of the Master Resolution and the Fifth Supplemental Resolution are available upon request to the Commission.

The following capitalized terms appearing in this Official Statement have the meanings set forth below, unless the context otherwise requires. A reference to any of these terms in the singular number includes the plural and vice versa.

### Excerpted Definitions from the Master Resolution and the Fifth Supplemental Resolution

“*Additional Security*” means any credit enhancement for specified Senior Obligations and any funds received or obligations payable to the Commission, other than Pledged Revenues, which the Commission chooses to include as security for specified Senior Obligations pursuant to a Supplemental Resolution, as provided in Section 308.

“*Annual Debt Service Requirements*” means, for any Fiscal Year, (i) the principal of, premium, if any, and interest on all Senior Obligations coming due at Maturity or Stated Maturity (or that could come due on demand of the owner thereof or be payable in respect of any required purchase of such Senior Obligation by the Commission or the Department, other than by acceleration or other demand conditioned upon default, non-performance or untimely performance by the Commission or the Department) and (ii) all other payments required to be made by the Commission under each Senior Obligation (net of any credits or deductions as provided in (7) below) in such Fiscal Year (other than payments that result from or are conditioned upon unscheduled termination, default, non-performance or untimely performance by the Commission or the Department), and, for such purposes, any one or more of the following rules shall apply at the election of the Commission (which may be exercised by an Authorized Representative or Designated Financial Officer); provided, however, that this definition shall never be applied in a manner which results in Annual Debt Service Requirements for any Fiscal Year being an amount that is less than the aggregate amount actually required to be paid in such Fiscal Year with respect to Outstanding Senior Obligations:

(1) Committed Take Out. If the Commission has entered into (a) a Credit Agreement constituting a Senior Obligation and constituting a binding commitment within normal commercial practice, from any bank, savings and loan association, insurance company, or similar institution to discharge any of its Long-Term Obligations at their Stated Maturity (or, if due on demand, at any date on which demand may be made) or to purchase any of its Long-Term Obligations at any date on which such debt is subject to required purchase, all pursuant to arrangements whereby the Commission’s obligation to repay the amounts advanced for such discharge or purchase constitutes a Long-Term Obligation or (b) a bond purchase contract or similar agreement constituting a binding commitment within normal commercial practice to deliver any Obligation to an underwriter or other purchaser of investment securities or municipal debt for the purpose of discharging any Outstanding Senior Obligation, then the portion of the Long-Term Obligation committed to be discharged or purchased shall be excluded from such calculation and the principal of and interest on the Long-Term Obligation incurred or to be incurred for such discharge or purchase that would be due in the Fiscal Year for which the calculation is being made, if incurred at the Stated Maturity, purchase date or date of discharge of the Long-Term Obligation to be discharged or purchased, shall be added to such calculation, and the remaining provisions of this definition shall be applied to such added Long-Term Obligation;

(2) Balloon Obligation. If the principal, including the accretion of interest resulting from original issue discount or compounding of interest (collectively, “Principal”), of any series or issue of Long-Term Obligations due (or payable in respect of any required purchase of such Long-Term Obligations by the Commission) in any Fiscal Year either is equal to at least twenty-five percent (25%) of the total principal of such Long-Term Obligation or exceeds by more than fifty percent (50%) the greatest amount of Principal of such series or issue of Long-Term Obligations due in any preceding or succeeding Fiscal Year (such Principal due in such Fiscal Year for such series or issue of Long-Term Obligation being referred to herein as “Balloon Obligation”), the amount of principal of such Balloon Obligation taken into account during any Fiscal Year shall be equal to the debt service

calculated using the principal of such Balloon Obligation amortized over the Term of Issue on a level debt service basis at an assumed interest rate equal to the rate borne by such Balloon Obligation on the date of calculation;

(3) Funded Sinking Fund. In the case of a Balloon Obligation (as defined in clause (2) above), if an Authorized Representative or Designated Financial Officer shall deliver to the Commission an Officer's Certificate providing for the retirement of (and the instrument creating such Balloon Obligation shall permit the retirement of), or for the accumulation of a sinking fund for (and the instrument creating such Balloon Obligation shall permit the accumulation of a sinking fund for), such Balloon Obligation according to a fixed schedule stated in such Officer's Certificate ending on or before the Fiscal Year in which such principal (and premium, if any) is due, then the principal of (and, in the case of retirement, or to the extent provided for by the sinking fund accumulation, the premium, if any, and interest and other payments due on) such Balloon Obligation shall be computed as if the same were due in accordance with such schedule; provided, that this clause (3) shall apply only to a Balloon Obligation for which the installments previously scheduled have been paid or deposited to the sinking fund established with respect to such obligation on or before the times required by such schedule; and, provided further, that this clause (3) shall not apply where the Commission has elected to apply the rule set forth in clause (2) above;

(4) Prepaid Obligation. Principal of, premium, if any, and interest on Senior Obligations, or portions thereof, shall not be included in the computation of the Annual Debt Service Requirements for any Fiscal Year for which such principal, premium, if any, or interest are payable from funds on deposit or set aside in trust for the payment thereof at the time of such calculations (including, without limitation, capitalized interest and accrued interest so deposited or set aside in trust) with a financial institution acting as fiduciary with respect to the payment of such Senior Obligation;

(5) Variable Rate. As to any Senior Obligation that bears interest at a variable interest rate which cannot be ascertained at the time of calculation of the Annual Debt Service Requirements, at the election of the Commission, the interest rate for such Senior Obligation shall be determined to be one of the following: (i) an interest rate equal to the average rate borne by such Senior Obligation (or by comparable debt in the event that such Senior Obligation has not been outstanding during the preceding twenty-four (24) months) for any twenty-four (24) month period ending within thirty (30) days prior to the date of calculation, (ii) if the Senior Obligation bears interest at tax-exempt rates, an interest rate equal to the twenty-four (24) month average of the Bond Market Association Bond Index (as most recently published in The Bond Buyer), unless such index is no longer published in The Bond Buyer, in which case the index to be used in its place shall be that index which the Commission (acting through an Authorized Representative or Designated Financial Officer) determines most clearly replicates such index as set forth in an Officer's Certificate, (iii) if the Senior Obligation bears interest at taxable rates, an interest rate equal to the rate of the thirty (30) day London Interbank Offered Rate, or (iv) that interest rate which, in the judgment of a Designated Financial Officer, based, to the extent possible, upon an accepted market index which corresponds with the provisions of the subject Senior Obligation, is the average rate anticipated to be in effect with respect to such Senior Obligation;

(6) Short-Term Obligations. Notwithstanding anything in the foregoing to the contrary, with respect to any Senior Obligation issued as a Short-Term Obligation, the debt service on such Senior Obligation shall be calculated assuming that such Senior Obligation will be refunded and refinanced to mature over a 20-year period with level debt service requirements and bearing interest at then current market rates; provided, however, that if in the judgment of a Designated Financial Officer, as set forth in an Officer's Certificate, the result of the foregoing calculation is inconsistent with the reasonable expectations of the Commission, the interest on such Senior Obligation shall be calculated in the manner provided in clause (5) of this definition and the maturity schedule shall be calculated in the manner provided in clause (2) of this definition; and

(7) Credit Agreements. If the Commission has entered into a Credit Agreement in connection with an issue of Senior Obligations, non-contingent payments due under any such Credit Agreement from either the Commission (other than payments for fees and expenses that are not deemed to be Senior Obligations) or the provider of the Credit Agreement shall be included in such calculation, except to the extent that such payments are already taken into account under clauses (1) through (6) above. Non-contingent payments due under any Senior Obligation that are otherwise included under clauses (1) through (6) above shall be excluded from such calculation to the extent that such payments are to be replaced by non-contingent payments under a Credit Agreement (from either the Commission or the provider of the Credit Agreement). Together with the certificate delivered pursuant to

Section 402(a), a Designated Financial Officer shall provide a written statement concerning (i) the determination whether such non-contingent payments under a Credit Agreement are already taken into account under clauses (1) through (6) or whether payments under clauses (1) through (6) are to be replaced by non-contingent payments under a Credit Agreement and (ii) the basis for such determination, together with any schedules or formulas deemed necessary or appropriate to support such explanation and to demonstrate the extent to which such non-contingent payments under the Credit Agreement will be taken into account under clauses (1) through (6) and/or the extent to which payments under clauses (1) through (6) will be replaced by non-contingent payments under a Credit Agreement.

“*Authorized Denominations*” means, unless otherwise provided in the Award Certificate, \$5,000 or any integral multiple thereof.

“*Authorized Representative*” means the Executive Director of the Department, each Deputy Executive Director of the Department and each Assistant Executive Director of the Department, or such other individuals so designated by the Commission to perform the duties of an Authorized Representative under this Resolution.

“*Bonds*” means the Bonds issued in one or more Series pursuant to and governed by the Fifth Supplement, as described in Article III hereof and in the Award Certificate.

“*Business Day*” means any day other than a Saturday or a Sunday or a day on which banking institutions are required or authorized by law or executive order to remain closed in the State or the City of New York or in the city in which the designated office of the Paying Agent/Registrar or the Securities Depository is located; provided, however, such term may have a different meaning for purposes of a Credit Facility.

“*Chapter 162*” means Chapter 162, Texas Tax Code, as amended, or any successor or supplemental statutory provision relating to the subject matter thereof.

“*Chapter 502*” means Chapter 502, Texas Transportation Code, as amended, or any successor or supplemental statutory provision relating to the subject matter thereof.

“*Chapter 1371*” means Chapter 1371, Texas Government Code, as amended, or any successor or supplemental statutory provision relating to the subject matter thereof.

“*Commission*” means the Texas Transportation Commission and its successors and assigns.

“*Comptroller*” means the Comptroller of Public Accounts of the State.

“*Constitutional Provision*” means Article III, Section 49-n of the Texas Constitution, relating to the issuance of bonds and other public securities payable from revenue deposited to the credit of the State Highway Fund.

“*Cost*” means, any financial commitment or agreement to pay money incurred or arising in connection with or related to an Obligation, including commitments or agreements (i) to pay or reimburse principal, premium or interest in respect of a public security or other obligation, (ii) to pay amounts owed in connection with or related to Credit Agreements (including scheduled payments, termination payments and other commitments to pay money arising under or pursuant to a swap or other derivative or hedging agreement) or to reimburse payments of others in connection therewith or related thereto, and (iii) to pay or reimburse any fees or expenses of a Fiscal Agent or other agent retained in connection with or related to any Obligation. For the avoidance of doubt, all Annual Debt Service Requirements constitute “Costs”.

“*Credit Agreement*” means, collectively, a loan agreement, revolving credit agreement, agreement establishing a line of credit, letter of credit, reimbursement agreement, insurance contract, commitment to purchase an Obligation, purchase or sale agreement, interest rate swap, cap and/or floor agreement or commitment, or other contract or agreement authorized, recognized, and approved by the Commission as a Credit Agreement in connection with the authorization, issuance, sale, resale, security, exchange, payment, purchase, remarketing, or redemption of an Obligation, the interest on an Obligation, or both. The use of such definition is not intended to

preclude the Commission or the Department from providing the credit or liquidity support with respect to Senior Obligations directly rather than through a financial or insurance institution.

“*Dedicated Federal Revenues*” means all revenues received from the federal government as reimbursement of State expenditures of funds that are themselves dedicated pursuant to Section 7-a.

“*Dedicated Registration Fees*” means revenues derived from the motor vehicle registration fees dedicated by Section 7-a for the sole purpose of acquiring rights-of-way, constructing, maintaining, and policing public roadways, and for the administration of such laws as may be prescribed by the State Legislature pertaining to the supervision of traffic and safety on such roads, which are deposited into the State Highway Fund pursuant to Chapter 502 or other applicable law.

“*Dedicated Revenues*” means, collectively, Dedicated Federal Revenues, Dedicated Registration Fees and Dedicated Taxes, together with any interest or earnings derived from the investment of such revenues.

“*Dedicated Taxes*” means revenues derived from taxes on motor fuels and lubricants dedicated by Section 7-a for the sole purpose of acquiring rights-of-way, constructing, maintaining, and policing public roadways, and for the administration of such laws as may be prescribed by the State legislature pertaining to the supervision of traffic and safety on such roads, which are deposited into the State Highway Fund pursuant to Subchapter F of Chapter 162 or other applicable law.

“*Defeasance Securities*” means (a) Government Obligations, (b) noncallable obligations of an agency or instrumentality of the United States, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date of the purchase thereof, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, and (c) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the Commission adopts or approves the proceedings authorizing the financial arrangements, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent.

“*Defeased Obligation*” means any Obligation and the interest thereon deemed to be paid, retired, and no longer Outstanding pursuant to the provisions of the applicable Supplemental Resolution (or, in the case of Obligations other than Senior Obligations, the applicable resolution or order authorizing such Obligation); and thus, no longer secured by, payable from, or entitled to the benefits of the Pledged Revenues (or, in the case of Obligations other than Senior Obligations, no longer secured by, payable from, or entitled to the benefits of the State Highway Fund Revenues).

“*Department*” means the Texas Department of Transportation or its successors.

“*Department Representative*” means an Authorized Representative or a Designated Financial Officer.

“*Designated Financial Officer*” means the Chief Financial Officer of the Department, the Director of the Finance Division of the Department, the Deputy Director of the Finance Division of the Department, the Debt Management Director of the Department or such other officer or employee of the Department so designated by the Commission to perform the duties of Designated Financial Officer under this Master Resolution.

“*Enabling Act*” means Section 222.003, Texas Transportation Code, as amended, or any successor or supplemental statutory provision relating to the subject matter thereof.

“*Excluded Amounts*” means moneys and investments deposited in, or appropriated or dedicated by law for deposit into, any Excluded Fund, and such amounts, once deposited to any Excluded Fund, shall no longer constitute Pledged Revenues or be considered State Highway Fund Revenues but shall be held and administered solely in the manner provided by the law or the order or resolution providing for or authorizing the creation of such Excluded Fund.

“*Excluded Funds*” means (i) the State Infrastructure Bank Account and each Proceeds Fund, Interest and Sinking Fund, Reserve Fund and Rebate Fund and (ii) any special fund, subfund, account or subaccount in the State Highway Fund created for the purpose of receiving, holding and administering Restricted Revenues.

“*First Tier Senior Obligation*” means the Series 2006 Bonds and any Senior Obligation incurred pursuant to this Master Resolution on a parity therewith.

“*First Tier Senior Obligation Debt Service Fund*” means the special fund or account established for First Tier Senior Obligations pursuant to Section 302 of the Master Resolution.

“*Fiscal Agent*” means any fiscal agent, issuing agent, paying agent, remarketing agent, auction agent, market agent, broker-dealer, trustee, custodian or other similar agent or financial institution appointed pursuant to a Supplemental Resolution (and may include the Comptroller) serving in one or more of such or similar capacities in accordance with such Supplemental Resolution.

“*Fiscal Year*” means the fiscal year of the Department, currently the period commencing on the first day of September and ending on the last day of August of the following year.

“*Government Obligations*” means direct obligations of, or obligations the principal or interest on which are unconditionally guaranteed by, the United States (including interest strips of the Resolution Funding Corporation).

“*Installment Factor*” means, with respect to each scheduled annual payment of principal or interest on First Tier Senior Obligations, the number twelve (12), and, with respect to each scheduled semi-annual payment of principal or interest on First Tier Senior Obligations, the number six (6).

“*Interest and Sinking Fund*” means any special fund, account or subaccount in the State Highway Fund created for the purpose of receiving, holding and administering amounts for the payment of Costs of any Obligation.

“*Long-Term Obligation*” means all Senior Obligations created, assumed, or guaranteed by the Commission that mature by their terms (in the absence of the exercise of any earlier right of demand), or are renewable at the option of the Commission to a date, more than one (1) year after the original creation, assumption, or guarantee of such Senior Obligation by the Commission.

“*Maturity*” when used with respect to any Obligation means the date on which the principal of such Obligation or any installment thereof becomes due and payable as therein provided, whether at the Stated Maturity thereof, by call for redemption, or otherwise.

“*Maximum Allowable Debt Service*” means: (a) with respect to First Tier Senior Obligations, an amount that is equal to twenty-five percent (25%) of the State Highway Fund Revenues deposited in the State Highway Fund pursuant to the State Highway Fund Revenue Laws in (i) the immediately preceding Fiscal Year or (ii) any period of twelve (12) consecutive months that begins no more than eighteen (18) months before the date on which Senior Obligations are to be issued or effective, as determined by a Designated Financial Officer; and (b) with respect to other Tiers, such amount as shall be established by the Commission at the time Senior Obligations of such Tier are initially issued or otherwise incurred. In determining the amount of State Highway Fund Revenues deposited during any twelve (12) month period, such amount may be adjusted to reflect any increase in State Highway Fund Revenues that a Designated Financial Officer certifies is expected to result from any adjustment to the amounts dedicated or appropriated to the State Highway Fund which is placed into effect following the commencement of such period as if such adjustment had been in effect for the entire twelve (12) month period.

“*Monthly Installment Amount*” means, with respect to each scheduled payment of principal or interest on any First Tier Senior Obligation, an amount that is equal to the quotient of (a) the total amount due for payment on any Principal Payment Date or Interest Payment Date divided by (b) the Installment Factor.

“*Obligation*” means any indebtedness, commitment or other agreement of the Commission or the Department payable (in whole or in part, in which event “Obligation” refers only to the applicable part) from State Highway Fund Revenues, including without limitation any obligation of the Department or the Commission under

any bond, note, lease, or Credit Agreement. For the purpose of determining the “Obligations” of the Commission, only outstanding Obligations shall be included.

“*Officer’s Certificate*” means a certificate signed by an Authorized Representative or a Designated Financial Officer, as applicable.

“*Outstanding*” or “*outstanding*” means, in connection with Senior Obligations, all Senior Obligations that have been executed and delivered under this Master Resolution, and, in connection with other Obligations, all such Obligations that have been duly executed and delivered under the order or resolution authorizing their execution and delivery, except:

- (a) Obligations theretofore canceled or delivered to a Fiscal Agent for cancellation;
- (b) Obligations that are deemed to be Defeased Obligations;
- (c) Obligations upon transfer of or in exchange for and in lieu of which other Obligations have been executed and delivered pursuant to this Master Resolution or any Supplemental Resolution; and
- (d) Obligations under which the obligations of the Commission have been released, discharged or extinguished in accordance with the terms thereof.

In determining whether the Secured Owners (or owners, as applicable) of a requisite aggregate principal amount of Obligations have concurred in any request, demand, authorization, direction, notice, consent or waiver under the provisions hereof, Obligations that are held by or on behalf of the Commission (unless, with respect to Senior Obligations, all of the Outstanding Senior Obligations are then owned by the Commission) shall be disregarded for the purpose of any such determination.

“*Owner*” means the Person in whose name the Series 2007 Bonds are registered on the security register maintained by the Paying Agent/Registrar.

“*Payment Date*” means, with respect to each Senior Obligation, the earlier of (a) the date on which the payment of a Cost is due and payable in connection with such Senior Obligation or (b) the date on which money is required to be transferred to or deposited in any fund or account established to secure or provide for the payment of Costs of such Senior Obligation, as provided by the terms thereof and the related Supplemental Resolution; provided, however, that for any First Tier Senior Obligation in respect of which Monthly Installment Amounts are deposited into the First Tier Senior Obligation Debt Service Fund, the Payment Date for such First Tier Senior Obligation shall be the business day next preceding the date that such payment is due. Notwithstanding the foregoing, as long as any Series 2006 Bonds, Series 2006-A Bonds, Series 2006-B Bonds, Series 2007 or Series 2008 Bonds remain outstanding, (i) the Payment Date for each Principal Payment Date and Interest Payment Date in respect of First Tier Senior Obligations shall be a date that is no later than the third (3rd) Business Day next preceding such Principal Payment Date or Interest Payment Date, as the case may be and (ii) the final deposit of a Monthly Installment Amount into the First Tier Senior Obligation Debt Service Fund next preceding each Principal Payment Date or Interest Payment Date for First Tier Senior Obligations shall occur on or before such Payment Date.

“*Permitted Investments*” means any security or obligation or combination thereof permitted under State law, including Section 404.024, Texas Government Code, as amended.

“*Person*” means an individual, public body, corporation, partnership, association, joint stock company, trust and any unincorporated organization.

“*Pledged Revenues*” means State Highway Fund Revenues deposited to the credit of the State Highway Fund and such additional moneys as may in the future be authorized by law to be pledged as security, and are so pledged pursuant to a Supplemental Resolution, as security for Senior Obligations.

“*Proceeds Fund*” means any special fund, account or subaccount in the State Highway Fund created for the purpose of receiving, holding and administering the proceeds of Obligations, including any bond proceeds fund and any fund, account or subaccount created pursuant to an order or resolution of the Commission providing for the issuance of a series, issue or installment of Subordinate Obligations.

“*Rebate Fund*” means any special fund, account or subaccount in the State Highway Fund created for the purpose of receiving, holding and administering amounts for payment to the government of the United States in respect of “arbitrage rebate” under Section 148(a) of the Code.

“*Reserve Fund*” means any special reserve or contingency fund, account or subaccount in the State Highway Fund created for the purpose of paying or securing any particular series, issue or installment of Obligations or any specific group of series, issues or installments of Obligations.

“*Restricted Revenues*” means revenues that are restricted as to use by (i) the laws of the State or federal law or (ii) contract or agreement controlling the receipt, disposition or payment of such revenues; provided, however, that Dedicated Revenues shall not constitute Restricted Revenues.

“*Safety Project*” means a project that reduces accidents or corrects or improves hazardous locations, as determined in accordance with 43 TAC § 15.174, or such other rule as the Commission may prescribe from time to time pursuant to the Enabling Act.

“*Section 7-a*” means Article VIII, Section 7-a of the Texas Constitution.

“*Section 7-b*” means Article VIII, Section 7-b of the Texas Constitution.

“*Secured Owner*” means each Person who is the holder of a bond, note or other public security or other obligation or evidence of indebtedness that is a Senior Obligation or who is a counterparty to a Credit Agreement or other contract or agreement that is, in whole or in part, a Senior Obligation.

“*Senior Obligation Debt Service Fund*” means the fund or funds created by Section 302 to secure payment of Senior Obligations.

“*Senior Obligations*” means all Obligations (or the applicable portion thereof, as the case may be), to the extent the same are issued or otherwise incurred as Senior Obligations pursuant to this Master Resolution (including First Tier Senior Obligations and Senior Obligations that are junior to First Tier Senior Obligations) and includes all obligations of the Commission owed to Secured Owners of Senior Obligations.

“*Series*” means a separate series or installment of Bonds as specified by or pursuant to the terms of the Fifth Supplement.

“*Series 2006 Bonds*” means the Texas Transportation Commission State Highway Fund First Tier Revenue Bonds, Series 2006, authorized by the First Supplemental Resolution.

“*Series 2006-A Bonds*” means the Texas Transportation Commission State Highway Fund First Tier Revenue Bonds, Series 2006-A, authorized by the Second Supplemental Resolution.

“*Series 2006-B Bonds*” means the Texas Transportation Commission State Highway Fund First Tier Revenue Bonds, Series 2006-B (Variable Rate Bonds), authorized by the Third Supplemental Resolution.

“*Series 2007 Bonds*” means the Texas Transportation Commission State Highway Fund First Tier Revenue Bonds, Series 2007, authorized by the Fourth Supplemental Resolution.

“*Series 2008 Bonds*” means the Texas Transportation Commission State Highway Fund First Tier Revenue Bonds, Series 2008, authorized by the Fourth Supplemental Resolution.

“*Short-Term Obligation*” means all Obligations that mature in less than 365 days. In the event a bank or other Person has extended a line of credit or the Commission has undertaken a commercial paper or similar program, only amounts actually borrowed under such line of credit or program and repayable in less than 365 days shall be considered Short-Term Obligations and the full amount of such commitment or program shall not be treated as Short-Term Obligations to the extent that such facility remains available but undrawn.

“*State*” means the State of Texas.

“*State Highway Fund*” means the fund created and maintained in the treasury of the State and held by the Comptroller for the collection, administration and safekeeping of all revenues dedicated to the uses set forth in Section 7-a and Section 7-b, and any other amounts dedicated or appropriated for deposit in the State treasury to the credit of such fund.

“*State Highway Fund Revenue Laws*” means the laws of the State (including Section 7-a and Section 7-b) providing for the use and collection of fees, taxes and other revenues that are dedicated or appropriated for deposit in the State treasury to the credit of the State Highway Fund, as in effect on the date of adoption of this Master Resolution.

“*State Highway Fund Revenues*” means all revenues (other than Excluded Amounts) deposited in, or appropriated or dedicated by law for deposit into, the State treasury to the credit of the State Highway Fund, including (a) Dedicated Revenues and (b) amounts collected or received pursuant to other State Highway Fund Revenue Laws.

“*State Highway System*” means the system of highways referred to in the Texas Transportation Code as the State Highway System.

“*State Infrastructure Bank Account*” means the account in the State Highway Fund established and administered pursuant to Subchapter D of Chapter 222, Texas Transportation Code.

“*State Legislature*” means the legislative department of the government of the State.

“*Stated Maturity*” when used with respect to any Senior Obligation or any installment of interest thereon means any date specified in the instrument evidencing or authorizing such Senior Obligation or such installment of interest as a fixed date on which the principal of such Senior Obligation or any installment thereof or the fixed date on which such installment of interest is due and payable.

“*Subordinate Obligations*” means all Obligations of any kind or class, including bonds, notes, bond anticipation notes, commercial paper, and other public securities, and credit agreements, contracts or other Obligations that are (i) payable from or secured by amounts credited to or held in the State Highway Fund and (ii) not issued or otherwise incurred as Senior Obligations pursuant to this Master Resolution.

“*Supplemental Resolution*” means any resolution (i) approved by (or pursuant to authority conferred by) the Commission (together with any supplements or amendments thereto), now or hereafter duly authorized and entered into in accordance with the provisions of Article IV hereof, approving one or more Senior Obligations, (ii) approved pursuant to Section 307 of this Master Resolution, or (iii) approved pursuant to Article VI of this Master Resolution.

“*Term of Issue*” means with respect to any Balloon Obligation a period of time equal to the greater of (i) the period of time commencing on the date of issuance of such Balloon Obligation and ending on the final maturity date of such Balloon Obligation or the maximum maturity date in the case of commercial paper or (ii) twenty (20) years.

“*Tier*” means a distinction in the level of lien seniority and payment priority applicable to any Senior Obligation (or the applicable portion thereof, as the case may be), which may be implemented (i) through specific provision in a Supplemental Resolution relating to one or more Senior Obligations issued or otherwise incurred pursuant to such Supplemental Resolution, (ii) through the amendment of this Master Resolution pursuant to Article VI hereof or (iii), to the extent permitted by this Master Resolution, in such other manner as shall be determined by the Commission.

“*United States*” means United States of America.

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### **Excerpted Provisions of the Master Resolution**

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Section 201. Establishment of Financing Program. Pursuant to authority conferred by and in accordance with the provisions of the Constitution and laws of the State, particularly the Constitutional Provision, the Enabling Act and Chapter 1371, the Commission hereby establishes a financing program (referred to herein as the "Financing Program") to provide funds for any lawful purpose in accordance with the Constitutional Provision and the Enabling Act and to provide a financing structure to facilitate the Commission's exercise of the powers and authority conferred by the Enabling Act and any other applicable laws through the issuance, execution or delivery of Obligations by the Commission. Obligations issued, executed or delivered by the Commission pursuant to (and secured by the lien established by) this Master Resolution are referred to herein as "Senior Obligations". Obligations that are not issued, executed or incurred by the Commission pursuant to (or secured by the lien established by) this Master Resolution are generally referred to herein as "Subordinate Obligations." Prior to the adoption of this Master Resolution and the issuance of the Series 2006 Bonds, no Senior Obligations have been issued, executed or delivered.

Each Senior Obligation (or series or installment of Senior Obligations) shall be issued, executed or delivered pursuant to the terms and conditions contained in a Supplemental Resolution; and each Senior Obligation shall be designated or identified by the Commission or an Authorized Representative in a manner that identifies or describes such Obligation as a Senior Obligation issued, executed or delivered pursuant to this Master Resolution.

Each Supplemental Resolution shall provide for the authorization, terms and any other matters related to the Senior Obligations authorized by such Supplemental Resolution. A Supplemental Resolution may provide for different or additional terms for the Senior Obligations of each series or installment.

Except as provided by (i) the Enabling Act (or such other law as may be enacted hereafter to increase, amend or otherwise alter the limitations and authority currently set forth in the Enabling Act) and (ii) this Master Resolution, no limitation is imposed as to the principal amount, purpose, payment terms or other terms of Senior Obligations that may be issued, executed or delivered under the provisions of this Master Resolution; provided, however, that Senior Obligations shall only be issued, executed or delivered for the purposes authorized by the Constitutional Provision. In addition, the Commission reserves (for itself and for the Department) the right to issue, execute and deliver Subordinate Obligations at such times and in such amounts as and to the extent authorized by law, including any amendments thereto enacted after the adoption of this Master Resolution.

#### Section 202. State Highway Fund Revenues Pledged to Secure Senior Obligations.

(a) As provided by the Enabling Act, Senior Obligations shall be limited obligations of the Commission, payable in accordance with their respective terms from a prior lien on, pledge of and security interest in the Pledged Revenues. The Senior Obligations shall constitute a valid claim of the respective Secured Owners thereof against the Pledged Revenues, which are hereby pledged to secure the payment of all Costs incurred as Senior Obligations, and which shall be utilized for no other purpose, except to the extent expressly authorized by this Master Resolution.

(b) Chapter 1208, Texas Government Code, applies to the issuance, execution and delivery of the Senior Obligations and the pledge of, lien on and security interest in the Pledged Revenues granted by the Commission under this Master Resolution, and such pledge of, lien on and security interest in the Pledged Revenues is therefore valid, effective, and perfected. If Texas law is amended at any time while the Senior Obligations are outstanding and unpaid such that the pledge of, lien on and security interest in the Pledged Revenues granted by the Commission under this Master Resolution is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, then in order to preserve to the Secured Owners the perfection of the pledge of, lien on and security interest in the Pledged Revenues, the Commission agrees to take such measures as it determines are

reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Texas Business & Commerce Code, to perfect such pledge of, lien on and security interest in the Pledged Revenues.

Section 203. Tiers of Senior Obligations to be Ratably Secured.

(a) The Commission reserves the right to establish multiple Tiers with respect to Senior Obligations; provided, however, that no Outstanding Senior Obligation shall be subrogated or made inferior to any other Senior Obligation unless such distinction is implemented through strict compliance with the provisions of this Master Resolution and the applicable Supplemental Resolution(s) relating to such Outstanding Senior Obligation. Until such time as any distinction among Tiers of Senior Obligations is implemented in accordance with the terms of this Master Resolution, all Senior Obligations shall be deemed and treated as First Tier Senior Obligations. The Commission may designate a portion of a Senior Obligation as being of one Tier and another portion of such obligation as being of a different Tier.

(b) Senior Obligations of each Tier issued or otherwise incurred hereunder are, and are to be, to the extent provided in this Master Resolution and the related Supplemental Resolution therefor, equally and ratably secured by the security pledged under this Master Resolution without preference, priority or distinction on account of the series or installment, or the actual time or times of the issuance, execution, authentication, delivery or maturity of the Senior Obligations of such Tier so that all Senior Obligations of the same Tier at any time Outstanding hereunder shall have the same right, lien and preference under and by virtue of this Master Resolution and shall be equally and ratably secured hereby with like effect as if they were of the same series, issue or installment and they had all been executed, authenticated and delivered simultaneously on the date hereof, whether the same, or any of them, shall actually be disposed of at such date, or whether they, or any of them, shall be disposed of at some future date. No series, issue or installment of Senior Obligations shall have any right, lien or claim to the security of or payment from any Credit Agreement unless such Credit Agreement is provided to secure or pay such Senior Obligations.

Section 204. State Highway Fund Revenues Used to Pay Subordinate Obligations.

(a) In addition to Senior Obligations, the Commission reserves the right to issue or otherwise incur Subordinate Obligations payable from and, if permitted by law, secured by a lien on and pledge of State Highway Fund Revenues (or any portion thereof), subject to the provisions of this Master Resolution and after provision has been made for the payment of all Senior Obligations in the manner set forth in this Master Resolution.

(b) Prior to the establishment of the Financing Program pursuant to this Master Resolution certain obligations and commitments to pay money or provide funds, which may be payable or paid from State Highway Fund Revenues, have been incurred by the Commission and the Department. In addition, in recognition that (i) the State Highway Fund has been established by the Legislature, and is maintained and administered, as the general source for payment of a substantial portion of the State's transportation needs (together with numerous other governmental purposes and programs administered by the State) and (ii) the Legislature, the Commission, the Department and certain other agencies of the State have in the past and may in the future look to and utilize the State Highway Fund as a source of funds for the payment of other obligations, commitments and indebtedness incurred or to be incurred (on a subordinate basis and after provision is made for payment of all Senior Obligations hereunder), the Commission hereby acknowledges the right and authority of the Legislature, and reserves for itself and the Department the right and authority, to utilize the State Highway Fund as a source of payment for such other obligations, commitments and indebtedness; provided, however, that payment of any amount owed, and the performance of any obligation incurred, pursuant to any such other obligation, commitment or indebtedness shall be subordinate and inferior to the payment of all Costs incurred as, and the performance of all obligations with respect to, Senior Obligations. Such subordinate obligations, commitments and indebtedness shall be deemed to constitute Subordinate Obligations for purposes of this Master Resolution.

Section 205. Combined Sources of Payment or Security. In addition to Pledged Revenues, Senior Obligations may be further payable from or secured by any other source of payment lawfully available for such purpose.

Section 206. No Pledge of Full Faith and Credit or Taxing Power. Senior Obligations shall not constitute general obligations of the Commission, the Department or the State and (unless authorized or permitted by other authority) under no circumstances shall Senior Obligations be payable from, nor shall the Secured Owners have any rightful claim to, any income, revenues, funds or assets of the Commission, the Department or the State other than those pledged hereunder as security for the payment of the Senior Obligations. Neither the full faith and credit nor the taxing power of the State is pledged to the payment of any Cost related to Senior Obligations.

Section 301. State Highway Fund.

(a) Confirmation and Maintenance of State Highway Fund. The Commission hereby confirms the prior creation by the State Legislature of the State Highway Fund, which is maintained within the State treasury and held by the Comptroller for the collection, administration and safekeeping of all revenues dedicated to the uses set forth in Section 7-a and Section 7-b, and any other amounts dedicated or appropriated for deposit in the State treasury to the credit of the State Highway Fund. In recognition of the fact that the Constitutional Provision and the Enabling Act provide for and authorize the Commission to issue and incur Senior Obligations secured by and payable from revenue deposited to the credit of State Highway Fund, the Commission covenants and agrees that, so long as any Senior Obligation shall remain Outstanding hereunder, (i) except as otherwise provided by subsection (b), it shall collect and deposit, or cause to be collected and deposited, in the State treasury all State Highway Fund Revenues, which deposits shall be made to the credit of the State Highway Fund at such times and in such amounts as provided by the State Highway Fund Revenue Laws and (ii) the State Highway Fund shall be maintained and administered as provided in this Master Resolution in order to provide the source of payment and security for Senior Obligations.

(b) Constitutional Appropriation of State Highway Fund Revenues. Pursuant to the Constitutional Provision, in each Fiscal Year in which amounts become due in respect of the Senior Obligations, there shall be appropriated from State Highway Fund Revenues an amount that is sufficient to pay all Costs related to Senior Obligations that become due during such Fiscal Year.

As provided by the Constitutional Provision and Section 502 of this Master Resolution, any dedication or appropriation of revenue to the credit of the State Highway Fund may not be modified so as to impair any Outstanding Senior Obligation unless provision has been made for a full discharge of such Senior Obligation in accordance with this Master Resolution. In accordance with such provision, all State Highway Fund Revenues will be deposited to the credit of the State Highway Fund; and, during each Fiscal Year in which any Senior Obligation remains Outstanding, State Highway Fund Revenues shall be appropriated for transfer and transferred in such amounts and at such times as provided herein.

(c) Application of Pledged Revenues. Consistent with the pledge of Pledged Revenues on a prior lien basis to secure the Senior Obligations in accordance with their respective terms, Pledged Revenues shall be applied for the following uses and in the order of priority shown:

- (i) First: to the payment of all Costs incurred as First Tier Senior Obligations as, when and to the extent provided by each First Tier Senior Obligation and the related Supplemental Resolution; provided, however, that transfers in respect of scheduled annual or semi-annual payments of principal and interest on First Tier Senior Obligations for deposit into the First Tier Senior Obligation Debt Service Fund shall be made in equal Monthly Installment Amounts and such transfers shall commence in the month that will permit the final Monthly Installment Amount in respect of any Principal Payment Date or Interest Payment Date to occur in the month in which such payment is due; and
- (ii) Second: to the payment of the amounts required to be deposited and credited to each reserve, contingency or other similar fund or account created and established in accordance with the provisions of any Supplemental Resolution relating to First Tier Senior Obligations and to the payment of other Costs related to First Tier Senior Obligations, as, when and to the extent provided in the related Supplemental Resolution; provided, that such payments shall be allocated among the then Outstanding issues or series of First Tier Senior Obligations and made on a pro rata basis (with such proration to be determined on the basis that the Outstanding principal amount

of each particular issue or series of First Tier Senior Obligations bears to the aggregate Outstanding principal amount of all issues or series of First Tier Senior Obligations for which payments are to be made in accordance with this clause (ii)); and

- (iii) Third: to the payment of (A) all Costs incurred as Senior Obligations other than First Tier Senior Obligations, on a priority basis consistent with their respective Tiers as, when and to the extent provided by each such Senior Obligation and the related Supplemental Resolution and (B) all deposits into each reserve, contingency or other similar fund or account created and established for the benefit of Senior Obligations on a priority basis consistent with their respective Tiers and in accordance with the provisions of the Supplemental Resolution relating to such Senior Obligation; and
- (iv) Fourth: to the payment of all Costs incurred as Subordinate Obligations (together with any related funding obligations) as, when and to the extent provided by each Subordinate Obligation and any order, resolution, contract or other agreement related thereto; and
- (v) Fifth: to (A) the payment of expenditures for public roadways in accordance with the State Constitution and federal law or (B) to the extent not required to be used for public roadways by the State Constitution or federal law, the payment of any lawful expenditure for any lawful purpose.

In recognition that (i) expenditures from the State Highway Fund may be made for the foregoing uses on various dates throughout each Fiscal Year, (ii) Senior Obligations have a first lien on and prior claim to the Pledged Revenues, and (iii) during each Fiscal Year, Costs incurred as Subordinate Obligations may become due and payable, and payments for lawful expenditures may be made, before the date or dates that Costs incurred as Senior Obligations have become due and payable, the Commission covenants that no Pledged Revenues shall be used to pay Costs incurred as Subordinate Obligations or for other lawful expenditures during any Fiscal Year to the extent that such payment is reasonably expected to result in the inability of the Commission to pay any Cost of a Senior Obligation coming due during such Fiscal Year.

If at any time there shall not be transferred to any fund or account maintained pursuant to this Master Resolution or any Supplemental Resolution for the benefit of the Secured Owners of the Senior Obligations the full amounts required herein (at the time specified herein and in each Supplemental Resolution), amounts equivalent to such deficiency shall be transferred thereto, in order of priority based on the respective Tiers of the affected Senior Obligations, from the first available Pledged Revenues not allocated to Senior Obligations of a prior Tier (in addition to the amounts otherwise required to be transferred to such funds and accounts pursuant to this Master Resolution during any succeeding period), and no Pledged Revenues shall be transferred to any fund or account established or maintained for the benefit of any Subordinate Obligation, nor shall any Pledged Revenues be used for any other purpose, until such deficiency has been restored.

Section 302. Senior Obligation Debt Service Fund; Payment of Senior Obligations. For Senior Obligations of each Tier, a separate Senior Obligation Debt Service Fund shall be created, held and administered by a Fiscal Agent (or, at the direction of a Designated Chief Financial Officer, separate accounts may be created within a single Senior Obligation Debt Service Fund for Senior Obligations of each Tier secured thereby). A Designated Financial Officer may also direct that separate accounts be created in each Senior Obligation Debt Service Fund as are deemed necessary or appropriate, including, but not limited to, separate accounts for the payment of principal and interest on Senior Obligations and accounts into which payments under or drawings on Credit Agreements are to be deposited and from which principal (including the redemption price) of and interest on the Senior Obligations related to or secured by such Credit Agreement are to be paid.

As and to the extent provided in the Supplemental Resolution authorizing any Senior Obligation, payments under Credit Agreements shall be paid into the Senior Obligation Debt Service Fund (or the account thereof) related to the applicable Senior Obligations to which such Credit Agreement relates and, from such fund or account, there shall be paid payments to the parties other than the Commission under such Credit Agreement.

Unless otherwise directed by a Designated Financial Officer, each Senior Obligation Debt Service Fund shall be created and held as a fund outside of the State treasury.

On or before each Payment Date, the Commission shall direct the Comptroller to withdraw from the State Highway Fund and deposit (or transfer to a Fiscal Agent for deposit) into the Senior Obligation Debt Service Fund for the applicable Senior Obligations the amounts required to be deposited or paid pursuant to the applicable Supplemental Resolution related to such Senior Obligations. In the alternative, and to the extent provided by any Senior Obligation and the related Supplemental Resolution, the Commission may direct the Comptroller to withdraw amounts from the State Highway Fund to pay any Cost related to a Senior Obligation directly to the Secured Owner who is entitled to such payment.

The moneys in each Senior Obligation Debt Service Fund and any accounts therein shall be held in trust for the benefit of the Senior Obligations of the Tier secured thereby, to the extent the foregoing are payable from such fund and accounts therein; and, to such extent and pending application thereof, such moneys shall be subject to a lien and charge in favor of the Secured Owners of the Senior Obligations of the Tier secured thereby until paid out or transferred to the Secured Owners, as hereinafter provided. From time to time, there shall be withdrawn from each Senior Obligation Debt Service Fund sufficient money to pay the Costs of Senior Obligations of the Tier or Tiers secured thereby as the same shall become due, except to the extent such Costs are payable from a fund or account other than the Senior Obligation Debt Service Fund for such Tier or Tiers, as provided in any Supplemental Resolution.

If, at the time a Fiscal Agent is required to make a withdrawal from a Senior Obligation Debt Service Fund, the moneys therein shall not be sufficient for such purpose, such Fiscal Agent shall notify the Department and the Comptroller of such deficiency, and the Comptroller shall transfer Pledged Revenues to such Senior Obligation Debt Service Fund in the amount required to cure such deficiency.

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Section 305. Investment of Funds; Transfer of Investment Income.

(a) State Highway Fund. Pledged Revenues in the State Highway Fund shall be invested in accordance with applicable State law, including Chapter 404, Texas Government Code, as amended.

(b) Money in Other Funds. Moneys in any fund or account established by this Master Resolution may be invested in Permitted Investments, provided that all such deposits and investments shall be made in such manner that the money required to be expended from any such fund or account will be available at the proper time or times. Such investments shall be sold promptly when necessary to prevent any default in connection with the Senior Obligations.

All investments shall be made by the Fiscal Agent (or other custodian of such fund or account) upon the request of a Designated Financial Officer, which request shall be made or confirmed in writing by a Designated Financial Officer specifying the fund or account from which moneys are to be invested and designating the specific Permitted Investments to be acquired. Such investment instructions may take the form of standing investment directions.

The interest or income received on an investment shall remain in the fund or account to which the investment is credited, except to the extent otherwise provided in the applicable Supplemental Resolution or as otherwise directed by a Designated Financial Officer.

The Fiscal Agent having custody of any fund or account hereunder shall withdraw, redeem or sell all or a portion of any investment upon receipt of the written direction from a Designated Financial Officer or upon a determination that moneys in such fund or account are to be applied or paid pursuant to the provisions of this Master Resolution or any Supplemental Resolution, and the proceeds thereof shall be deposited in the appropriate fund or account. A Fiscal Agent shall not be liable or responsible for any depreciation in the value of Permitted Investments.

Section 306. Security for Uninvested Funds. So long as any Senior Obligation remains Outstanding, all uninvested moneys on deposit in, or credited to, any fund or account established by this Master Resolution shall be secured by the pledge of security as provided by law for funds of the State and its agencies.

Section 307. Moneys Held in Trust. All moneys deposited with a Fiscal Agent for the purpose of paying any Cost of a Senior Obligation hereby secured, either at the Stated Maturity thereof or upon call for redemption, shall be held in trust for the respective Secured Owners of such Senior Obligations. However, any moneys which shall be so held by a Fiscal Agent, and which shall remain unclaimed by the Secured Owners of such Senior Obligations for the period of three (3) years after the date on which the Cost of such Senior Obligations shall have become due and payable, shall, subject to the provisions of Title 6, Texas Property Code, be paid to the Commission or the Department upon its written request or to such officer, board or body as may then be entitled by law to receive the same; thereafter, the Secured Owners of such Senior Obligations shall look only to the Commission or the Department or to such officer, board or body, as the case may be, for payment and then only to the extent of the amounts so received without any interest thereon, and such Fiscal Agent shall have no responsibility with respect to such moneys.

Section 308. Additional Security; Additional Funds and Accounts.

(a) Except as otherwise provided or permitted herein, the Pledged Revenues securing the Senior Obligations of any Tier shall be shared on a parity with other Senior Obligations of such Tier on an equal and ratable basis. The Commission may, however, in its discretion, provide Additional Security (but shall have no obligation to provide such additional security or credit enhancement) to other Senior Obligations (even of the same Tier), except that no Additional Security shall be provided unless there shall have been first delivered an opinion of Bond Counsel to the effect that the exclusion from gross income of interest on any Senior Obligations for federal income tax purposes will not be adversely affected thereby.

(b) In lieu of or in addition to Additional Security, the Commission may, in its discretion, create and provide for the funding and administration of one or more reserve, contingency or other similar funds or accounts to provide additional security for any one or more series, issues or installments of Senior Obligations, except that no such fund or account shall be created unless there shall have been first delivered an opinion of Bond Counsel to the effect that the exclusion from gross income of interest on any Senior Obligations for federal income tax purposes will not be adversely affected thereby.

(c) The Commission also reserves the right and a Designated Financial Officer is authorized to (i) establish such additional funds and accounts pursuant to a Supplemental Resolution as are deemed necessary or appropriate to administer this Master Resolution or to provide for the payment of Costs related to Senior Obligations and (ii) establish additional funds or accounts for the purpose of holding the proceeds of Senior Obligations, holding funds obtained from any other source or to accomplish any other lawful purpose of the Commission or the Department and for such other purposes as the Commission or a Designated Financial Officer may determine from time to time.

Section 401. Issuance of Senior Obligations.

(a) The Commission reserves and shall have the right and power to issue or otherwise incur Senior Obligations for any purpose authorized by law, including the refunding of Senior Obligations, Subordinate Obligations, or other obligations of the Commission, pursuant to the provisions of this Master Resolution and Supplemental Resolutions to be hereafter authorized. The Commission hereby covenants and agrees to comply with all constitutional and statutory requirements of State law and, to the extent applicable, federal law governing the issuance of Senior Obligations.

Subject to the applicable provisions hereof, the Commission may from time to time issue, incur, assume, guarantee, or otherwise become liable in respect of Senior Obligations in accordance with this Article and a Supplemental Resolution providing for the issuance, execution and/or delivery of such Senior Obligations. Senior Obligations may be further secured by or made payable from any other source of payment lawfully available for such purpose.

Prior to the issuance, execution or delivery of any Senior Obligation hereunder, the Commission shall provide:

(i) A certified copy of the minute order or other official action of the Commission (A) approving a Supplemental Resolution establishing or providing the terms and provisions of such Senior Obligations, and (B) authorizing the issuance, execution and/or delivery of the Senior Obligations;

(ii) An opinion or opinions of Bond Counsel to the effect that (A) issuance, execution and/or delivery of the Senior Obligations is permitted under this Master Resolution and any Supplemental Resolutions that authorized the issuance, execution and/or delivery of any then Outstanding Senior Obligations and (B) the Supplemental Resolution relating to such Senior Obligations has been duly authorized and such Senior Obligations when issued, executed and/or delivered will constitute valid, binding and enforceable limited obligations of the Commission, subject to bankruptcy, equitable principles and other standard legal opinion exceptions;

(iii) An Officer's Certificate to the effect that (A) the Commission is not in default under this Master Resolution or any Supplemental Resolution or, upon the issuance of such Senior Obligations, any existing default will be cured and (B) following the issuance of such Senior Obligations, the maximum Annual Debt Service Requirements with respect to all then Outstanding Senior Obligations will not exceed the Maximum Allowable Debt Service in the current or any future year; and

(iv) Such further documents, moneys and securities as are required by the provisions of the Supplemental Resolution providing for the issuance, execution and/or delivery of such Senior Obligations.

(b) In making any determination hereunder regarding the principal amount of Obligations being issued and incurred or then Outstanding, Credit Agreements shall be deemed to have no principal amount to the extent that such Credit Agreement relates to an Obligation that has already been considered in making such determination. The effect of Credit Agreements on debt service shall be as provided in the definition of Annual Debt Service Requirements in Exhibit A hereto.

(c) In connection with the issuance of Senior Obligations to refund Outstanding Senior Obligations of the same or higher Tier, the Commission may provide, in lieu of the certification required by clause (iii)(B) of subsection (a), an Officer's Certificate to the effect that, following the issuance of such Senior Obligations, the Annual Debt Service Requirements will not exceed one hundred ten percent (110%) of the Annual Debt Service Requirements in effect prior to the issuance of such Senior Obligations; provided, however, that such certification need not address the Annual Debt Service Requirements for Fiscal Years in which no Senior Obligations (other than the Senior Obligations then being issued) will be Outstanding.

#### Section 402. Credit Agreements.

(a) To the extent permitted by law, the Commission may authorize the execution and delivery of one or more Credit Agreements upon (i) delivery of an Officer's Certificate to the effect that the Credit Agreement is in the best interest of the Commission and (ii) compliance with the requirements of Section 401, if the Credit Agreement is to constitute a Senior Obligation in whole or in part (as specified in the Credit Agreement).

(b) A Credit Agreement and the Costs thereof may, pursuant to its terms, constitute, in whole or in part, (i) a Senior Obligation of the same or lower Tier as the Tier of the Senior Obligation to which such Credit Agreement relates payable from and secured by a pledge of the Pledged Revenues on parity with other Senior Obligations of such Tier or (ii) a Subordinate Obligation payable from or secured by a pledge of State Highway Fund Revenues (or any portion thereof) subordinate to the Senior Obligations.

#### Section 403. Issuance of Subordinate Obligations.

(a) The Commission reserves the right to issue or otherwise incur, for any lawful purpose, Subordinate Obligations in such amounts (without limitation), on such dates and having such terms as the Commission may determine.

(b) No holder of any Subordinate Obligation, or party to a transaction relating to any Subordinate Obligation, shall have or be entitled to claim any right or benefit under this Master Resolution by virtue of the ownership of or interest in such Subordinate Obligation.

(c) Nothing in this Master Resolution shall be construed to limit or interfere with the right and authority of the Commission and the Department to issue or otherwise incur Subordinate Obligations in such number of tiers and levels of payment priority as shall be determined by the Commission and the Department.

Section 501. Payment of Senior Obligations. The Commission covenants that it will promptly pay the Costs related to every Senior Obligation issued, executed or delivered under the provisions of this Master Resolution at the places, on the dates and in the manner provided herein and in said Senior Obligations. Except as otherwise provided in this Master Resolution, such Costs are payable solely from Pledged Revenues, which Pledged Revenues are hereby pledged to the payment thereof in the manner and to the extent provided herein. Unless otherwise provided in a Supplemental Resolution therefor, neither the general credit of the Commission or the Department nor the general credit nor the taxing power of the State or any political subdivision, agency or instrumentality thereof is pledged for the payment of the Costs of Senior Obligations.

Section 502. No Modification of Dedication or Appropriation. While any Senior Obligation remains Outstanding, the Commission will protect (or take steps within its authority to protect) the dedication and appropriation of State Highway Fund Revenues to the credit of the State Highway Fund (including the dedication of Dedicated Revenues), and the Commission will enforce (or take steps within its authority to enforce) the Constitutional Provision to prevent any modification of such dedication and appropriation which might impair any Outstanding Senior Obligation.

Section 503. Performance. The Commission will faithfully perform at all times (a) any and all covenants, undertakings, stipulations, and provisions contained in this Master Resolution and in each Supplemental Resolution, and in each and every Senior Obligation or evidence thereof and (b) each and every duty imposed upon the Commission or the Department by law with respect to the State Highway Fund and the Senior Obligations; and the Commission will exercise its best efforts to cause the Comptroller to perform each and every duty imposed upon the Comptroller by law with respect to the State Highway Fund and the Senior Obligations.

Section 504. Determination of Authorized Representative and Designated Financial Officer. For all purposes of this Master Resolution, the judgment of an Authorized Representative or Designated Financial Officer, as applicable, shall be deemed final in the determination of which Obligations are currently outstanding and payable from or secured by a lien on any Pledged Revenues and in the determination of the Annual Debt Service Requirements and the principal amount and the other terms and expectations of the Commission regarding annual expenditures with respect to Senior Obligations.

Section 505. Lawful Authority. The Commission is lawfully qualified to pledge the Pledged Revenues herein pledged in the manner prescribed herein, and has lawfully exercised such right.

Section 506. Preservation of Lien. Subject to the conditions set forth in this Master Resolution, the Commission will (i) not do or suffer any act or thing to be done whereby the pledge of the Pledged Revenues might or could be impaired and (ii) take all actions to the extent necessary to ensure that no other agency of the State does or suffers any act or thing to be done whereby the pledge of the Pledged Revenues might or could be impaired.

Section 507. No Additional Encumbrance. The Commission shall not incur additional Obligations secured by or payable from the Pledged Revenues in any manner, except as permitted by this Master Resolution, unless such Obligation is made junior and subordinate in all respects to the liens, pledges, covenants, and agreements of this Master Resolution and any Supplemental Resolution. Any Obligation incurred by the Commission without satisfying the conditions for the issuance of Senior Obligations, as set forth in this Master Resolution, is hereby declared to be a Subordinate Obligation, junior and subordinate in all respects to the liens, pledges, covenants, and agreements of this Master Resolution and any Supplemental Resolution whether or not such status is noted.

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Section 510. Secured Owners' Rights and Remedies. This Master Resolution shall constitute a contract between the Commission and the Secured Owners from time to time and this Master Resolution shall be and remain irrevocable until all Outstanding Senior Obligations shall be fully paid or discharged or provision therefor shall have been made as provided herein. In the event of a default in the payment of any Cost of any Senior Obligation or a default in the performance of any duty or covenant provided by law or in this Master Resolution, the Secured Owners may pursue all legal remedies afforded by the Constitution and laws of the State to compel the Commission and the Department to remedy such default and to prevent further default or defaults. Without in any way limiting the generality of the foregoing, it is expressly provided that any Secured Owner may (at law or in equity), by suit, action, mandamus, or other proceedings, enforce and compel performance of all duties required to be performed by the Commission and the Department under this Master Resolution.

Section 511. Waiver of Certain Covenants. The Commission may omit in any particular instance to comply with any covenant or condition set forth in this Master Resolution or any Supplemental Resolution if before or after the time for such compliance the Secured Owners of the same percentage of Outstanding Senior Obligations, the consent of which would be required to amend the applicable provisions to permit such noncompliance, shall either waive such compliance in the particular instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived and, until such waiver shall become effective, the obligations of the Commission and the Department and the duties of the Commission and the Department in respect of any such covenant or condition shall remain in full force and effect. For the purpose of this Section, the rights and identity of the Secured Owners (and those who may consent on their behalf) shall be determined in accordance with Section 603 of this Master Resolution.

Section 601. Amendments and Supplements without Secured Owners' Consent. The Commission may from time to time and at any time amend or supplement this Master Resolution, without the consent of or notice to any Secured Owner, to effect any one or more of the following:

(a) to cure any ambiguity, defect or omission or correct or supplement any provision herein or in any Supplemental Resolution, upon receipt by the Commission of an approving opinion of Bond Counsel to the effect that such amendment or supplement is needed for such purpose, and will more clearly express the intent of this Master Resolution or such Supplemental Resolution;

(b) to grant to or confer upon the Secured Owners any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Secured Owners which are not contrary to or inconsistent with this Master Resolution as then in effect or to subject to the pledge and lien of this Master Resolution additional revenues, properties or collateral;

(c) to add to the covenants and agreements of the Commission in this Master Resolution other covenants and agreements thereafter to be observed by the Commission or to surrender any right or power herein reserved to or conferred upon the Commission by this Master Resolution;

(d) to modify, alter, supplement or amend this Master Resolution in such manner as shall permit the qualification of this Master Resolution, if required, under the Trust Indenture Act of 1939, the Securities Act of 1933 or any similar federal statute hereafter in effect;

(e) to modify any of the provisions of this Master Resolution in any respect whatever, provided that such modification shall be, and be expressed to be, effective only after all Senior Obligations outstanding at the date of the adoption of such modification shall cease to be outstanding;

(f) to make such other changes or amendments as the Commission may deem necessary or desirable and which shall not, in the judgment of the Commission, materially adversely affect the interests of the Secured Owners, including any change or amendment to establish Tiers; provided, however, that, except to the extent provided in the applicable Supplemental Resolution pursuant to which a then Outstanding Senior Obligation has been issued, no then Outstanding Senior Obligation shall be subrogated or made inferior to any Senior Obligation that is issued in reliance on and as a result of such change or amendment; or

(g) to authorize the issuance, execution or delivery of Senior Obligations in accordance with the terms of this Master Resolution.

Section 602. Amendments and Supplements Requiring Secured Owners' Consent. The Commission, at any time and from time to time, may amend or supplement this Master Resolution for the purpose of making any modification or amendment to this Master Resolution, but only with the written consent (given as provided in Section 603) of the Secured Owners of at least a majority in aggregate principal amount of the Senior Obligations Outstanding at the time such consent is given or such amendment takes effect. In case less than all of the Senior Obligations then Outstanding are affected by the modification or amendment, only the written consent of the Secured Owners of a majority in aggregate principal amount of the Senior Obligations so affected and Outstanding at the time such consent is given or such amendment takes effect shall be required. If such modification or amendment will, by its terms, not take effect so long as any Senior Obligations so affected remain Outstanding, the consent of the Secured Owners of such Senior Obligations shall not be required and such Senior Obligations shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Senior Obligations under this Section.

Notwithstanding the foregoing, no modification, amendment or supplement hereof shall permit any of the following, without the consent of each Secured Owner whose rights are affected thereby:

(a) a change in the terms of Stated Maturity or redemption of any Senior Obligation or of any installment of interest thereon;

(b) a reduction in the principal amount of or redemption premium on any Senior Obligation or in the rate of interest thereon or a change in the coin or currency in which such Senior Obligation is payable;

(c) the granting of a preference or priority of any Senior Obligations over any other Senior Obligations, except to the extent permitted herein;

(d) a reduction in the aggregate principal amount of Senior Obligations of which the consent of the Secured Owners is required to effect any such modification or amendment; or

(e) a change in the provisions of this Section.

Notwithstanding the foregoing, the Secured Owner of any Senior Obligation may extend the time for payment of the principal of or interest on such Senior Obligation; provided, however, that upon the occurrence of an event of default, funds available hereunder for the payment of the principal of and interest on such Senior Obligations shall not be applied to any payment so extended until all principal and interest payments which have not been extended have first been paid in full. Notice of any amendment or supplement executed pursuant to this Section shall be given to the affected Secured Owners promptly following the approval thereof.

Section 603. Consents of Secured Owners. If at any time the Commission shall desire to supplement or amend this Master Resolution pursuant to Section 602, the Commission or the Department shall cause notice of the proposed supplement or amendment to be (i) published in a financial newspaper or journal of general circulation in the City of New York, New York (including, but not limited to, The Bond Buyer or The Wall Street Journal) or in the State (including, but not limited to, The Texas Bond Reporter) or (ii) disseminated by electronic means customarily used to convey notices of redemption, once during each calendar week for at least two (2) successive calendar weeks. Such notice shall briefly set forth the nature of the proposed supplement or amendment and shall state that a copy thereof is on file at the principal office of at least one Fiscal Agent for each Senior Obligation affected thereby for inspection by Secured Owners affected thereby. In lieu of publication of such notice (or the dissemination thereof by electronic means), the Commission or the Department may give or cause to be given such notice in writing, by certified mail, to each Secured Owner. A copy of such notice shall be provided in writing to each rating agency maintaining a rating on any Senior Obligation.

Such Supplemental Resolution shall not be effective unless and until there shall have been filed with the Commission and any Fiscal Agent identified in the notice provided by the Commission or the Department, the written consents of Secured Owners of the percentage of Senior Obligations specified in Section 602. Any such consent shall be

binding upon the Secured Owner giving such consent and upon any subsequent Secured Owner of such Senior Obligations and of any Senior Obligations issued in exchange therefor or in lieu thereof (whether or not such subsequent Secured Owner has notice thereof), unless such consent is revoked in writing by the Secured Owner giving such consent or a subsequent Secured Owner of such Senior Obligation by filing such revocation in accordance with Section 604.

Notwithstanding anything else herein, the Commission may determine in each Supplemental Resolution the treatment and identity of who may act as a Secured Owner and other matters relating to such Senior Obligation, including designating any Bond Insurer or the provider under a Credit Agreement as the sole Secured Owner of such Senior Obligation. If a Supplemental Resolution is to become effective under Section 602 on the same date as the date of issuance of additional Senior Obligations, the consents of the underwriters or purchasers of such additional Senior Obligations shall be counted for purposes of Section 602 and this Section.

With respect to any amendment or supplement undertaken pursuant to Section 602, whenever at any time the Commission shall receive an instrument or instruments executed by all of the Secured Owners or the Secured Owners of a majority in principal amount of the Outstanding Senior Obligations, which instrument or instruments shall refer to the proposed amendment or supplement described in such notice and which specifically consent to and approve such amendment or supplement in substantially the form described in the notice of amendment, the Commission may adopt the amendatory or supplemental resolution in substantially the same form.

Section 604. Consent Irrevocable. Any consent given by any Secured Owner pursuant to the provisions of this Article shall be irrevocable for a period of six (6) months from the date of such consent. Such consent may be revoked at any time after the applicable period of time that a consent is irrevocable by the Secured Owner, by filing notice thereof with the Commission and any Fiscal Agent identified in the notice provided by the Commission or the Department, but such revocation shall not be effective if the owners of the requisite amount of the Outstanding Senior Obligations, prior to the attempted revocation, consented to and approved the amendment. Notwithstanding the foregoing, any consent given by a Secured Owner at the time of and in connection with the initial sale or incurrence of an issue or series of Senior Obligations by the Commission shall be irrevocable.

Section 605. Exclusion of Certain Senior Obligations for the Purpose of Consent. Senior Obligations that are to be disregarded under the definition of "Outstanding" shall not be deemed Outstanding for the purpose of consent or other action or any calculation of Outstanding Senior Obligations provided for in this Article. At the time of any consent or other action taken under this Article or elsewhere in this Master Resolution, the Commission shall furnish a certificate of a Designated Financial Officer, upon which any party may rely, describing all Senior Obligations so to be excluded.

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Section 607. Amendment of Supplemental Resolutions. Each Supplemental Resolution may contain additional provisions governing the ability of the Commission to amend and supplement such Supplemental Resolution; provided, however, that no amendment may be made to any Supplemental Resolution for the purpose of granting to the Secured Owners of Outstanding Senior Obligations under such Supplemental Resolution a priority over the owners of any other Outstanding Senior Obligations, except as permitted by the terms governing such Outstanding Senior Obligations.

Section 608. Effect of Supplemental Resolutions. Upon the execution and delivery of any Supplemental Resolution under this Article, this Master Resolution shall be modified in accordance therewith, and such Supplemental Resolution shall form a part of this Master Resolution for all purposes; and every Secured Owner of any Senior Obligation theretofore or thereafter executed and delivered hereunder shall be bound thereby to the extent provided in such Supplemental Resolution.

Section 701. Successorship of Commission. In the event of the dissolution of the Commission, all of the covenants, stipulations, obligations, rights and agreements contained in this Master Resolution by or on behalf of, or for the benefit of, the Commission shall bind or inure to the benefit of the successor or successors of the Commission from time to time and any officer, board, commission, authority, agency or instrumentality to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. The word "Commission" as used in this Master Resolution shall include such successor or successors.

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Section 703. Defeasance. The Commission may defease the provisions of this Master Resolution (and discharge its obligation to the Secured Owners of any or all of the Senior Obligations to pay the principal of, premium, if any, and interest thereon) in the manner provided in the Supplemental Resolution authorizing the issuance, execution and delivery of such Senior Obligations.

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**Excerpted Provisions of the Fifth Supplemental Resolution<sup>(1)</sup>**

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Section 201. Issuance of First Tier Senior Obligations.

(b) Bonds Are First Tier Senior Obligations. The Bonds are First Tier Senior Obligations under the Master Resolution.

Section 202. Supplemental Resolution to Constitute a Contract; Equal Security. In consideration of the acceptance of the Bonds by those who shall hold the same from time to time, this Supplemental Resolution shall be deemed to be and shall constitute a contract between the Commission and the Owners from time to time of the Bonds, and the pledge made in this Supplemental Resolution by the Commission and the covenants and agreements set forth in this Supplemental Resolution to be performed by the Commission shall be for the equal and proportionate benefit, security, and protection of all Owners from time to time of the Bonds, without preference, priority, or distinction as to security or otherwise of any of the Bonds authorized hereunder over any of the other Bonds by reason of time of issuance, sale, or maturity thereof or otherwise for any cause whatsoever, except as expressly provided in or permitted by this Supplemental Resolution and the Master Resolution.

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Section 302. Date, Denominations, Numbers, Maturities and Terms of Bonds.

(f) Rights of Bond Insurer. As long as a Bond Insurer is not in default on the related bond insurance policy for any series or installment of Bonds, the Bond Insurer shall be deemed to be the sole Owner of such Bonds insured by it for all purposes of this Supplemental Resolution or the Master Resolution.

Section 308. Purchase in Lieu of Redemption. Notwithstanding anything in this Supplemental Resolution to the contrary, if and to the extent that the Bonds are subject to optional redemption, all or a portion of the Bonds to be redeemed as specified in the notice of redemption, may be purchased by the Paying Agent/Registrar at the direction of a Department Representative on the date which would be the redemption date if such Bonds were redeemed rather than purchased in lieu thereof at a purchase price equal to the redemption price which would have been applicable to such Bonds on the redemption date for the account of and at the direction of a Department Representative who shall give the Paying Agent/Registrar notice at least forty-five (45) days prior to the scheduled redemption date for the Bonds accompanied by a Favorable Opinion of Bond Counsel. In the event the Paying Agent/Registrar is so directed to purchase Bonds in lieu of optional redemption, no notice to the Owners of the

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<sup>(1)</sup> The Fifth Supplemental Resolution authorizes the issuance of Bonds in one or more Series in an aggregate principal amount not to exceed \$2.9 billion; provided however, that not more than \$1.5 billion of new money bonds may be issued per fiscal year. The Fifth Supplemental Resolution also authorizes the issuance of First Tier Senior Obligations for purposes of refunding previously issued First Tier Senior Obligations in the event that certain savings criteria are met. The references in the following excerpts to the "Bonds" include the specific series of Bonds described in the body of this Official Statement, which constitute the first series of obligations delivered under the Fifth Supplemental Resolution.

Bonds to be so purchased (other than the notice of redemption otherwise required hereunder) shall be required, and the Paying Agent/Registrar shall be authorized to apply to such purchase the funds which would have been used to pay the redemption price for such Bonds if such Bonds had been redeemed rather than purchased. Each Bond so purchased shall not be canceled or discharged and shall be registered in the name of the Commission and such purchase is not intended to extinguish or merge such debt. The Bonds to be purchased under this Section 308 which are not delivered to the Paying Agent/Registrar on the purchase date shall be deemed to have been so purchased and not optionally redeemed on the purchase date and shall cease to accrue interest as to the former Owner on the purchase date.

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Section 401. Disposition of Proceeds. The net proceeds of each series or installment of Bonds shall be applied, at the direction of a Department Representative, for the following purposes:

(a) to the payment of any underwriting discount and any Credit Agreement fees, either by retention and/or wire transfer directly to such parties; and

(b) for deposit to the credit of the Bond Proceeds Fund established in Section 402, the balance of the proceeds of such Bonds (after deducting any costs or expenses of issuance deducted, withheld or paid from such proceeds at the direction of a Department Representative, as provided in subsection (a)), together with any other moneys received for deposit in the Bond Proceeds Fund.

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Section 601. Amendments or Modifications Without Consent of Owners of Bonds. Subject to the provisions of the Master Resolution, this Supplemental Resolution and the rights and obligations of the Commission and of the Owners of the Outstanding Bonds, including Purchased Bonds, may be modified or amended at any time without notice to or the consent of any Owner of Bonds or any other Senior Obligation, solely for any one or more of the following purposes:

(a) To add to the covenants and agreements of the Commission contained in this Supplemental Resolution, other covenants and agreements thereafter to be observed, or to surrender any right or power reserved to or conferred upon the Commission in this Supplemental Resolution;

(b) To cure any ambiguity or inconsistency, or to cure or correct any defective provisions contained in this Supplemental Resolution, upon receipt by the Commission of an Opinion of Counsel, that the same is needed for such purpose, and will more clearly express the intent of this Supplemental Resolution;

(c) To supplement the security for the Bonds;

(d) To make such other changes in the provisions hereof, as the Commission may deem necessary or desirable and which shall not, in the judgment of the Commission, materially adversely affect the interests of the Owners of the Outstanding Bonds;

(e) To make any changes or amendments requested by the State Attorney General's Office or the State Bond Review Board as a condition to the approval of the Bonds, which changes or amendments do not, in the judgment of the Commission, materially adversely affect the interests of the Owners of the Outstanding Bonds;

(f) To make any changes or amendments requested by any bond rating agency then rating or requested to rate the Bonds, as a condition to the issuance or maintenance of a rating, which changes or amendments do not, in the judgment of the Commission, materially adversely affect the interests of the Owners of the Outstanding Bonds; or

(g) To make any changes or amendments that take effect after a mandatory tender of Variable Rate Bonds if there is delivered to the Commission a Favorable Opinion of Bond Counsel.

Section 602. Amendments or Modifications With Consent of Owners of Bonds.

(a) Amendments. Subject to the other provisions of this Supplemental Resolution and the Master Resolution, the Owners of Outstanding Bonds aggregating a majority in Outstanding Principal Amount shall have the right from time to time to approve any amendment, other than amendments described in Section 601 hereof, to this Supplemental Resolution that may be deemed necessary or desirable by the Commission, provided, however, that nothing herein contained shall permit or be construed to permit, without the approval of the Owners of all of the Outstanding Bonds, the amendment of the terms and conditions in this Supplemental Resolution or in the Bonds so as to:

- (i) Make any change in the maturity of the Outstanding Bonds;
- (ii) Reduce the rate of interest borne by Outstanding Bonds;
- (iii) Reduce the amount of the principal payable on Outstanding Bonds;
- (iv) Modify the terms of payment of principal of or interest on the Outstanding Bonds, or impose any conditions with respect to such payment;
- (v) Affect the rights of the Owners of less than all Bonds then Outstanding; or
- (vi) Change the minimum percentage of the Outstanding Principal Amount of Bonds necessary for consent to such amendment.

(b) Notice. If at any time the Commission shall desire to amend this Supplemental Resolution pursuant to Subsection (a), the Commission shall cause notice of the proposed amendment to be published in a financial newspaper or journal of general circulation in the City of New York, New York (including, but not limited to, The Bond Buyer or The Wall Street Journal) or in the State (including, but not limited to, The Texas Bond Reporter), once during each calendar week for at least two successive calendar weeks or disseminated by electronic means customarily used to convey notices of redemption. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy thereof is on file at the principal office of the Paying Agent/Registrar for inspection by all Owners of Bonds. Such publication is not required, however, if the Commission gives or causes to be given such notice in writing to each Owner of Bonds. A copy of such notice shall be provided in writing to each national rating agency maintaining a rating on the Bonds.

(c) Receipt of Consents. Whenever at any time the Commission shall receive an instrument or instruments executed by all of the Owners or the Owners of Outstanding Bonds aggregating a majority in Outstanding Principal Amount, as appropriate, which instrument or instruments shall refer to the proposed amendment described in said notice and which consent to and approve such amendment in substantially the form of the copy thereof on file as aforesaid, the Commission may adopt the amendatory resolution in substantially the same form.

(d) Consent Irrevocable. Any consent given by any Owner pursuant to the provisions of this Section shall be irrevocable for a period of six (6) months from the date of the first publication or other service of the notice provided for in this Section, and shall be conclusive and binding upon all future Owners of the same Bond during such period. Such consent may be revoked at any time after six (6) months from the date of the first publication of such notice by the Owner who gave such consent, or by a successor in title, by filing notice thereof with the Paying Agent/Registrar and the Commission, but such revocation shall not be effective if the Owners of Outstanding Bonds aggregating a majority in Outstanding Principal Amount prior to the attempted revocation consented to and approved the amendment. Notwithstanding the foregoing, any consent given at the time of and in connection with the initial purchase of Bonds shall be irrevocable.

(e) Ownership. For the purpose of this Section, the ownership and other matters relating to all Bonds registered as to ownership shall be determined from the Security Register kept by the Paying Agent/Registrar therefor. The Paying Agent/Registrar may conclusively assume that such ownership continues until written notice to the contrary is served upon the Paying Agent/Registrar.

Section 603. Consent of Owners. Any consent required by Section 602 shall be deemed given:

(a) By all Owners of Outstanding Bonds if a Credit Agreement (which guarantees the timely payment of principal and interest on such Bonds) is in effect, the provider of such Credit Agreement is not in default thereunder, and the provider of such Credit Agreement has given its written consent to the amendments;

(b) By all Owners of Outstanding Bonds if the Bonds are remarketed following a mandatory tender of all Bonds and the substance of such amendment has been disclosed to the market in connection with such remarketing;

(c) By all Owners of Outstanding Bonds if the Bonds are in an Auction Rate Mode and if written notice of the substance of the proposed amendment has been furnished to the Owners and if following such disclosure, there have occurred at least two (2) consecutive Auctions (as defined in Exhibit E) and in each such Auction either Sufficient Clearing Bids existed or the Auction Rate determined was the Winning Bid Rate;

(d) By any Owner in any number of concurrent writings of similar tenor, signed by such Owner or his duly authorized attorney. Proof of the execution of any such consent or of the writing appointing any such attorney and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Second Supplement, and shall be conclusive in favor of the Commission with regard to any action taken, suffered or omitted to be taken by the Commission under such instrument, namely:

(i) the fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by affidavit of any witness to such execution; and

(ii) the fact of the ownership by any person of any Bond and the date of the ownership of same may be proved by a certificate executed by an appropriate officer of the Paying Agent/Registrar, stating that at the date thereof such Bond was registered in the name of such party in the Security Register.

In lieu of the foregoing the Commission may accept such other proofs of the foregoing as it shall deem appropriate. Consents obtained pursuant to Section 603(d) shall be valid only if given following (i) the publication of notice pursuant to Section 602(b) or (ii) the mailing of notice by or on behalf of the Commission requesting such consent and setting forth the substance of the amendment of this Second Supplement in respect of which such consent is sought and stating that copies thereof are available at the offices of the Department for inspection. Such notice shall be mailed by certified mail to each Owner of the Bonds affected at the address shown on the Security Register.

Section 604. Effect of Amendments. Upon the adoption by the Commission of any resolution to amend this Supplemental Resolution pursuant to the provisions of this Article, this Supplemental Resolution shall be deemed to be amended in accordance with the amendatory order or resolution, and the respective rights, duties, and obligations of the Commission and all the Owners of Outstanding Bonds shall thereafter be determined, exercised, and enforced under the Master Resolution and this Supplemental Resolution, as amended

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Section 702. Defeasance of Bonds.

(a) Deemed Paid. The principal of and/or the interest and redemption premium, if any, on any Bonds (and the Maturity Amount of Capital Appreciation Bonds) shall be deemed to be a Defeased Obligation within the meaning of the Master Resolution, except to the extent provided in subsections (c) and (e) of this Section, when payment of the principal of such Bonds, plus interest thereon to the due date or dates (whether such due date or dates be by reason of maturity, upon redemption, or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof (including the giving of any required notice of redemption or the establishment of irrevocable provisions for the giving of such notice) or (ii) shall have been provided for on or before such due date

by irrevocably depositing with or making available to the Paying Agent/Registrar for such Bonds or an eligible trust company or commercial bank for such payment (1) lawful money of the United States of America sufficient to make such payment, (2) Defeasance Securities, certified by an independent public accounting firm of national reputation to mature as to principal and interest in such amounts and at such times as will ensure the availability, without reinvestment, of sufficient money to provide for such payment and when proper arrangements have been made by the Commission with the Paying Agent/Registrar for such Bonds or an eligible trust company or commercial bank for the payment of its services until all Defeased Obligations shall have become due and payable or (3) any combination of (1) and (2). At such time as Bonds shall be deemed to be a Defeased Obligation hereunder, as aforesaid, such Bonds and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of the Pledged Revenues as provided in the Master Resolution and this Supplemental Resolution, and such principal and interest shall be payable solely from such money or Defeasance Securities.

(b) Investments. The deposit under clause (ii) of subsection (a) of this Section shall be deemed a payment of Bonds as aforesaid when proper notice of redemption of such Bonds shall have been given or upon the establishment of irrevocable provisions for the giving of such notice, in accordance with the Master Resolution and this Supplemental Resolution. Any money so deposited with the Paying Agent/Registrar for such Bonds or an eligible trust company or commercial bank as provided in this Section may at the discretion of the Commission also be invested in Defeasance Securities, maturing in the amounts and at the times as hereinbefore set forth, and all income from all Defeasance Securities in possession of the Paying Agent/Registrar for such Bonds or an eligible trust company or commercial bank pursuant to this Section which is not required for the payment of such Bonds and premium, if any, and interest thereon with respect to which such money has been so deposited, shall be remitted to the Commission.

(c) Continuing Duty of Paying Agent/Registrar and Paying Agent/Registrar. Notwithstanding any provision of any other Section of this Supplemental Resolution which may be contrary to the provisions of this Section, all money or Defeasance Securities set aside and held in trust pursuant to the provisions of this Section for the payment of principal of Bonds and premium, if any, and interest thereon, shall be applied to and used solely for the payment of the particular Bonds and premium, if any, and interest thereon, with respect to which such money or Defeasance Securities have been so set aside in trust. Until all Defeased Obligations shall have become due and payable, the Paying Agent/Registrar for such Defeased Obligations shall perform the services of Paying Agent/Registrar for such Defeased Obligations the same as if they had not been defeased, and the Commission shall make proper arrangements to provide and pay for such services as required by this Supplemental Resolution.

(d) Amendment of this Section. Notwithstanding anything elsewhere in this Supplemental Resolution, if money or Defeasance Securities have been deposited or set aside with the Paying Agent/Registrar for such Bonds or an eligible trust company or commercial bank pursuant to this Section for the payment of Bonds and such Bonds shall not have in fact been actually paid in full, no amendment of the provisions of this Section shall be made without the consent of the registered owner of each Bonds affected thereby.

(e) Retention of Rights. Notwithstanding the provisions of subsection (a) of this Section, to the extent that, upon the defeasance of any Defeased Obligations to be paid at its maturity, the Commission retains the right under State law to later call that Defeased Obligations for redemption in accordance with the provisions of this Supplemental Resolution and the Award Certificate relating to the Defeased Obligations, the Commission may call such Defeased Obligations for redemption upon complying with the provisions of State law and upon the satisfaction of the provisions of subsection (a) of this Section with respect to such Defeased Obligations as though it was being defeased at the time of the exercise of the option to redeem the Defeased Obligations and the effect of the redemption is taken into account in determining the sufficiency of the provisions made for the payment of the Defeased Obligations.

(f) Interest Rate. Notwithstanding anything elsewhere in this Supplemental Resolution, any Variable Rate Bonds in a mode other than the Fixed Rate Mode, shall be deemed to be paid and discharged only if the amount held under 702(a)(i) or (ii) above shall be sufficient to provide for the payment of such Variable Rate Bonds assuming the highest possible interest rate on such Bonds (as established in accordance with this Supplemental Resolution) to the earlier of the first tender date or redemption date thereof.

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Section 710. Credit Agreements; Swap Agreements; Interest Rate Lock Agreements.

(a) General. Pursuant to authority conferred by Chapter 1371, the Commission, acting through a Department Representative, may enter into one or more Credit Agreements in connection with the Bonds (whether prior to or concurrently with the issuance of Bonds, or thereafter), upon the written opinion of a Department Representative that such Credit Agreement is in the best interests of the Commission given the market conditions at the time.

With respect to any Credit Agreement executed in the form of a Swap Agreement, the Commission, acting through a Department Representative, may accept and execute confirmations related thereto, together with any amendments or supplements thereto, when, in the judgment of the Department Representative, the execution of such Swap Agreement is consistent with the Commission's Derivative Management Policy and (i) the transaction is expected to reduce the net interest to be paid by the Commission with respect to any series or installment of Bonds or any other First Tier Senior Obligation over the term of the confirmation or (ii) given the market conditions at the time, the transaction is in the best interest of the Commission.

The Costs of Credit Agreements shall be paid out of Pledged Revenues, and the Commission's obligation to pay such Costs may constitute First Tier Senior Obligations under the Master Resolution, except to the extent that the Credit Agreement provides that an obligation of the Commission thereunder shall be payable from and secured by a lien on Pledged Revenues subordinate to the lien securing the payment of the First Tier Senior Obligations. The obligations of the Commission under any such Credit Agreement that are subordinate to the lien securing the payment of First Tier Senior Obligations may, pursuant to the terms thereof, constitute, in whole or in part (i) Senior Obligations (other than First Tier Senior Obligations) or (ii) Subordinate Obligations, as provided by the Master Resolution.

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**Appendix B**

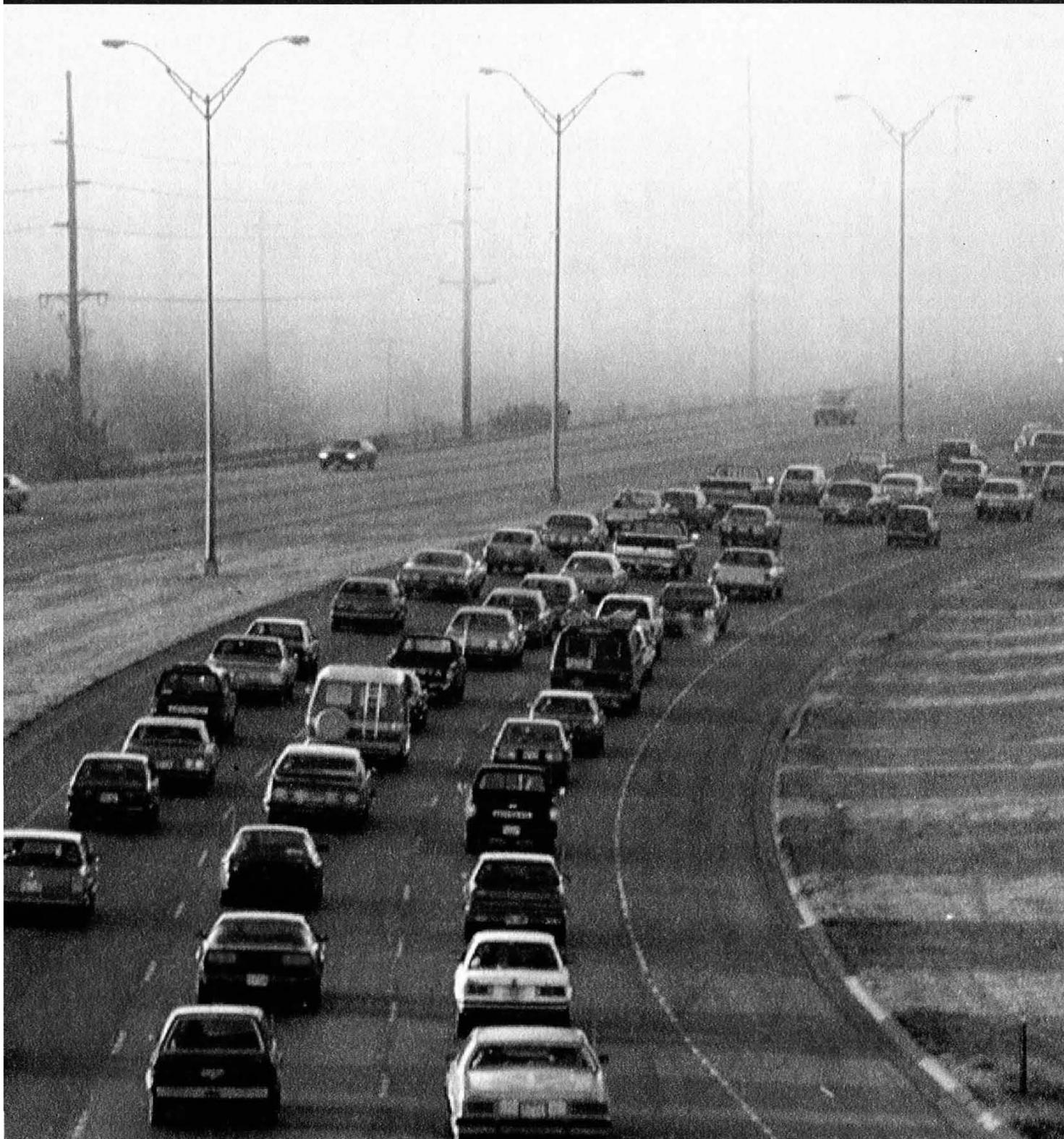
**Excerpts From Unaudited Department Financial Statements for Fiscal Year ended August 31, 2009**

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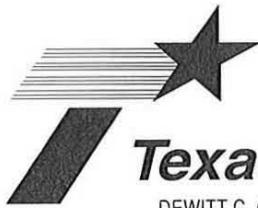
TEXAS DEPARTMENT OF TRANSPORTATION

# Annual Financial Report

(Unaudited)



For the Fiscal Year ended August 31, 2009



# Texas Department of Transportation

DEWITT C. GREER STATE HIGHWAY BLDG. • 125 E. 11TH STREET • AUSTIN, TEXAS 78701-2483 • (512) 463-8585

November 20, 2009

TO: The Honorable Rick Perry, Governor  
The Honorable Susan Combs, Texas Comptroller  
Mr. John O'Brien, Director, Legislative Budget Board  
Mr. John Keel, Comptroller of Public Accounts, State Auditor

We are pleased to submit the Annual Financial Report of the Texas Department of Transportation (TxDOT) for the year ended August 31, 2009, in compliance with §2101.011 of the Texas Government Code and in accordance with the requirements established by the Comptroller of Public Accounts.

Due to the statewide requirements embedded in Governmental Accounting Standards Board Statement No. 34, *Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments*, the Comptroller of Public Accounts does not require the accompanying annual financial report to comply with all of the requirements in this statement. The financial report will be considered for audit by the State Auditor as part of the audit of the State of Texas Comprehensive Annual Financial Report; therefore, an opinion has not been expressed on the financial statements and related information contained in this report.

If you have any questions regarding the report or the Schedule of Expenditures of Federal Awards, please contact Glen T. Knipstein at (512) 486-5314.

Sincerely,

Amadeo Saenz, Jr., P.E.  
Executive Director

Attachment

THE TEXAS PLAN  
REDUCE CONGESTION • ENHANCE SAFETY • EXPAND ECONOMIC OPPORTUNITY • IMPROVE AIR QUALITY  
INCREASE THE VALUE OF OUR TRANSPORTATION ASSETS

*An Equal Opportunity Employer*

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# Combined Financial Statements

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**EXHIBIT I**

**COMBINED BALANCE SHEET/STATEMENT OF NET ASSETS - GOVERNMENTAL FUNDS  
August 31, 2009**

	GOVERNMENTAL FUND TYPES				
	GENERAL (EXH A-1)	SPECIAL REVENUE (EXH B-1)	DEBT SERVICE (0008)* U/F(0010)	CAPITAL PROJECTS (7604) * U/F (7604)	GOVERNMENTAL FUNDS TOTAL
	\$	\$	\$	\$	\$
<b>ASSETS</b>					
Current Assets:					
Cash and Cash Equivalents					
Cash on Hand	480	952,268			952,748
Cash in Bank (Note 3)		109,148,525			109,148,525
Cash in State Treasury (Note A)	5,628,589	5,108,229,626	99,685,152		5,213,543,367
Legislative Appropriations	1,648,243				1,648,243
Receivables from:					
Federal		329,876,436			329,876,436
Other Intergovernmental (Note B)		197,552,264			197,552,264
Interest and Dividends		10,909,285			10,909,285
Accounts Receivable		31,038,669			31,038,669
Due from Other Funds (Note 12)		31,618,857			31,618,857
Due from Other Agencies (Note 12)	1,568,530	190,601,105		294,568	192,464,203
Consumable Inventories		114,775,577			114,775,577
Loans and Contracts [Note 1 F(4)]	52,348	12,273,364			12,325,712
Total Current Assets	<u>8,898,190</u>	<u>6,136,975,976</u>	<u>99,685,152</u>	<u>294,568</u>	<u>6,245,853,886</u>
Non-Current Assets:					
Federal Receivable		20,670,360			20,670,360
Loans and Contracts [Note 1 F(4)]	354,575	255,405,494			255,760,069
Capital Assets:					
Non-Depreciable					
Land and Land Improvements					0
Infrastructure					0
Construction in Progress					0
Depreciable					
Building and Building Improvements					0
Less Accumulated Depreciation					0
Infrastructure					0
Less Accumulated Depreciation					0
Furniture and Equipment					0
Less Accumulated Depreciation					0
Vehicles, Boats, and Aircraft					0
Less Accumulated Depreciation					0
Other Capital Assets					0
Less Accumulated Depreciation					0
Deferred Charge					0
Other Non-Current Assets		7,918,180			7,918,180
Total Non-Current Assets	<u>354,575</u>	<u>283,994,034</u>	<u>0</u>	<u>0</u>	<u>284,348,609</u>
<b>TOTAL ASSETS</b>	<u>\$ 9,252,765</u>	<u>\$ 6,420,970,010</u>	<u>\$ 99,685,152</u>	<u>\$ 294,568</u>	<u>\$ 6,530,202,495</u>

GOVERNMENT-WIDE ADJUSTMENT FUND TYPES

CAPITAL ASSET ADJUSTMENTS	LONG-TERM LIABILITIES ADJUSTMENTS	OTHER ADJUSTMENTS	STATEMENT OF NET ASSETS
\$	\$	\$	\$
			952,748
			109,148,525
			5,213,543,367
			1,648,243
			329,876,436
			197,552,264
			10,909,285
			31,038,669
			31,618,857
			192,464,203
			114,775,577
			12,325,712
<u>0</u>	<u>0</u>	<u>0</u>	<u>6,245,853,886</u>
			20,670,360
			255,760,069
7,740,350,256			7,740,350,256
46,529,198,070			46,529,198,070
3,930,528,363			3,930,528,363
304,187,654			304,187,654
(159,415,020)			(159,415,020)
17,711,548,671			17,711,548,671
(9,934,756,672)			(9,934,756,672)
174,593,080			174,593,080
(120,724,583)			(120,724,583)
636,192,931			636,192,931
(362,723,584)			(362,723,584)
10,327,994			10,327,994
(3,250,276)			(3,250,276)
	26,835,997		26,835,997
<u>66,456,056,884</u>	<u>26,835,997</u>	<u>0</u>	<u>66,767,241,490</u>
<u>\$ 66,456,056,884</u>	<u>\$ 26,835,997</u>	<u>\$ 0</u>	<u>\$ 73,013,095,376</u>

**EXHIBIT I**

**COMBINED BALANCE SHEET/STATEMENT OF NET ASSETS - GOVERNMENTAL FUNDS**  
(Continued)

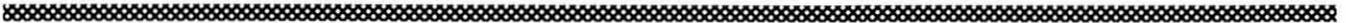
	GOVERNMENTAL FUND TYPES				
	GENERAL	SPECIAL REVENUE	DEBT SERVICE	CAPITAL	GOVERNMENTAL
	(EXH A-1)	(EXH B-1)	(0008)* U/F(0010)	PROJECTS (7604) * U/F (7604)	FUNDS TOTAL
<b>LIABILITIES AND FUND BALANCES</b>	\$	\$	\$	\$	\$
Current Liabilities:					
Payables from:					
Accounts Payable	1,716,923	817,298,288		294,568	819,309,779
Contracts Payable [Note 1 F(8)]		144,551,772			144,551,772
Payroll Payable	441,566	65,320,809			65,762,375
Interest Payable					0
Due to Other Funds (Note 12)	2,668,621	28,863,668			31,532,289
Due to Other Agencies (Note 12)	2,106,433	54,698,670			56,805,103
Deferred Revenues [Note 1 F(9)]		3,324,313,711			3,324,313,711
Short Term Debt (Note 4)		300,000,000			300,000,000
Pass Through Toll Notes Payable (Note 5)					0
Revenue Bonds Payable (Note 5)					0
Premium-Revenue Bonds (Note 5)					0
General Obligation Bonds Payable (Note 5)					0
Premium-GO Bonds (Note 5)					0
Employees Compensable Leave (Note 5)					0
Pollution Remediation Obligations (Note 5)					0
<b>Total Current Liabilities</b>	<u>6,933,543</u>	<u>4,735,046,918</u>	<u>0</u>	<u>294,568</u>	<u>4,742,275,029</u>
Non-Current Liabilities:					
Pass Through Toll Notes Payable (Note 5)					0
Revenue Bonds Payable (Note 5)					0
Premium-Revenue Bonds (Note 5)					0
General Obligation Bonds Payable (Note 5)					0
Premium-GO Bonds (Note 5)					0
Employees Compensable Leave (Note 5)					0
Pollution Remediation Obligations (Note 5)					0
<b>Total Non-Current Liabilities</b>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<b>TOTAL LIABILITIES</b>	<u>6,933,543</u>	<u>4,735,046,918</u>	<u>0</u>	<u>294,568</u>	<u>4,742,275,029</u>
<b>Fund Financial Statement-Fund</b>					
Fund Balances (Deficits):					
Reserved For:					
Encumbrances	195,920	156,141,591			156,337,511
Inventories		114,775,577			114,775,577
Imprest		148,633			148,633
Loans & Contracts	354,575	255,405,494			255,760,069
Debt Service			99,685,152		99,685,152
Unreserved:					
Designated For Other:					
Highway Construction and Maintenance		1,043,445,333			1,043,445,333
State Infrastructure Bank		115,631,666			115,631,666
Undesignated:					
Unencumbered Legislative Appropriations:					
Future Operations	957,399				957,399
Consolidated Funds	811,328				811,328
Texas Transportation Corporations		374,798			374,798
<b>TOTAL FUND BALANCES</b>	<u>2,319,222</u>	<u>1,685,923,092</u>	<u>99,685,152</u>	<u>0</u>	<u>1,787,927,466</u>
<b>TOTAL LIABILITIES AND FUND BALANCE</b>	<u>\$ 9,252,765</u>	<u>\$ 6,420,970,010</u>	<u>\$ 99,685,152</u>	<u>\$ 294,568</u>	<u>\$ 6,530,202,495</u>

GOVERNMENT-WIDE ADJUSTMENT FUND TYPES

CAPITAL ASSET ADJUSTMENTS	LONG-TERM LIABILITIES ADJUSTMENTS	OTHER ADJUSTMENTS	STATEMENT OF NET ASSETS
\$	\$	\$	\$
			819,309,779
			144,551,772
			65,762,375
	150,899,099		150,899,099
			31,532,289
			56,805,103
		(20,994,026)	3,303,319,685
			300,000,000
	205,000		205,000
	104,100,000		104,100,000
	6,362,681		6,362,681
	34,730,000		34,730,000
	8,762,477		8,762,477
	57,324,561		57,324,561
	755,000		755,000
<u>0</u>	<u>363,138,818</u>	<u>(20,994,026)</u>	<u>5,084,419,821</u>
			19,690,000
	2,687,655,000		2,687,655,000
	103,235,273		103,235,273
	6,097,325,000		6,097,325,000
	148,227,810		148,227,810
	16,837,010		16,837,010
	8,326,687		8,326,687
<u>0</u>	<u>9,081,296,780</u>	<u>0</u>	<u>9,081,296,780</u>
<u>0</u>	<u>9,444,435,598</u>	<u>(20,994,026)</u>	<u>14,165,716,601</u>
			156,337,511
			114,775,577
			148,633
			255,760,069
			99,685,152
			1,043,445,333
			115,631,666
			957,399
			811,328
			374,798
<u>0</u>	<u>0</u>	<u>0</u>	<u>1,787,927,466</u>
<u>\$ 0</u>	<u>\$ 9,444,435,598</u>	<u>\$ (20,994,026)</u>	<u>\$ 15,953,644,067</u>

**EXHIBIT I**

**COMBINED BALANCE SHEET/STATEMENT OF NET ASSETS - GOVERNMENTAL FUNDS**  
(Concluded)



GOVERNMENTAL FUND TYPES

	GENERAL (EXH A-1)	SPECIAL REVENUE (EXH B-1)	DEBT SERVICE (0008)* U/F(0010)	CAPITAL PROJECTS (7604) * U/F (7604)	GOVERNMENTAL FUNDS TOTAL
	\$	\$	\$	\$	\$
<b>Government-wide Statement-Net Assets</b>					
Net Assets:					
Invested in Capital Assets,					
Net of Related Debt					
Restricted for:					
Other					
Unrestricted					
Total Net Assets					

Note (A):

	Cash in State Treasury
Consolidated Fund 0071	\$ 853,535
Consolidated Fund 0900	3,976,724
Consolidated Fund 5015	786,992
Consolidated Fund 5140	11,338
TOTAL	<u>\$ 5,628,589</u>

Note (B): The revenue breakdown is as follows:

	Other Intergovernmental Receivable
Sales of Goods and Services	\$ 104,330,216
Licenses, Fees and Permits	93,222,048
Total	<u>\$ 197,552,264</u>

The accompanying notes to the financial statements are an integral part of this financial statement.

\* Appropriated Fund is noted as (XXXX), USAS D23 Fund is noted as U/F (XXXX).

GOVERNMENT-WIDE ADJUSTMENT FUND TYPES

CAPITAL ASSET ADJUSTMENTS	LONG-TERM LIABILITIES ADJUSTMENTS	OTHER ADJUSTMENTS	STATEMENT OF NET ASSETS
\$	\$	\$	\$
66,456,056,884	(7,649,537,349)		58,806,519,535
	(1,693,900,680)		(1,693,900,680)
	(74,161,571)	20,994,026	(53,167,545)
<u>\$ 66,456,056,884</u>	<u>\$ (9,417,599,600)</u>	<u>\$ 20,994,026</u>	<u>\$ 57,059,451,310</u>

**EXHIBIT II**

**COMBINED STATEMENT OF REVENUES, EXPENDITURES, & CHANGES  
IN FUND BALANCES/STATEMENT OF ACTIVITIES - GOVERNMENTAL FUNDS  
For the fiscal year ended August 31, 2009**

	GOVERNMENTAL FUND TYPES				
	GENERAL (EXH A-2)	SPECIAL REVENUE (EXH B-2)	DEBT SERVICE (0008)* U/F(0010)	CAPITAL PROJECTS FUND (7604)* U/F (7604)	GOV'T FUNDS TOTAL
<b>REVENUES:</b>	\$	\$	\$	\$	\$
Legislative Appropriations:					
Original Appropriations	3,579,072				3,579,072
Add'l Appropriations	1,434,537				1,434,537
Taxes		39,631,000			39,631,000
Federal Revenues		2,780,814,143			2,780,814,143
Federal Grant Pass Through Revenues		1,496,510			1,496,510
State Grant Pass Through Revenues					0
Licenses, Fees and Permits [Note 1 H(4)]	828,665	1,574,469,615			1,575,298,280
Interest & Investment Income		117,728,212	840,232		118,568,444
Land Income		14,151,673			14,151,673
Settlement of Claims		1,530,671			1,530,671
Sales of Goods and Services	1,099,404	242,997,226			244,096,630
Other Revenues		4,157,622			4,157,622
<b>TOTAL REVENUES:</b>	<u>6,941,678</u>	<u>4,776,976,672</u>	<u>840,232</u>	<u>0</u>	<u>4,784,758,582</u>
<b>EXPENDITURES:</b>					
Salaries and Wages	2,590,620	631,841,865			634,432,485
Payroll Related Costs	1,330,201	214,421,433			215,751,634
Professional Fees and Services	791,286	287,463,091			288,254,377
Travel	63,577	4,004,156			4,067,733
Materials and Supplies	127,172	272,182,628			272,309,800
Communications and Utilities	3,492	53,742,544			53,746,036
Repairs and Maintenance	5,685	1,043,226,001			1,043,231,686
Rentals and Leases	1,716	12,060,836			12,062,552
Printing and Reproduction		5,993,863			5,993,863
Claims and Judgments		10,094,356			10,094,356
Federal Pass Through Expenditures		8,341,187			8,341,187
State Grant Pass Through Expenditures		1,799,550			1,799,550
Intergovernmental Payments	1,619,138	633,330,476		16,437,538	651,387,152
Public Assistance Payments		15,834,123			15,834,123
Other Expenditures	39,733	192,199,248			192,238,981
Principal on State Bonds		32,495,000	94,155,000		126,650,000
Amortization					0
Interest on State Bonds		295,568,846	68,837,400		364,406,246
Other Financing Fees		11,289,989			11,289,989
Capital Outlay	1,728,966	3,378,199,580			3,379,928,546
Depreciation Expense					0
Decrease in Pollution Obligation					0
<b>TOTAL EXPENDITURES:</b>	<u>8,301,586</u>	<u>7,104,088,772</u>	<u>162,992,400</u>	<u>16,437,538</u>	<u>7,291,820,296</u>
<b>EXCESS (DEFICIT) OF REVENUES OVER EXPENDITURES:</b>	<u>(1,359,908)</u>	<u>(2,327,112,100)</u>	<u>(162,152,168)</u>	<u>(16,437,538)</u>	<u>(2,507,061,714)</u>
<b>OTHER FINANCING SOURCES (USES):</b>					
Operating Transfers In [Note 1 H (7)]	2,318,438	2,826,404,826	261,837,320	16,437,538	3,106,998,122
Operating Transfers Out [Note 1 H (7)]	(2,862,306)	(1,714,071,767)			(1,716,934,073)
Bond & Note Proceeds		1,224,495,000			1,224,495,000
Insurance Recoveries		13,828,826			13,828,826
Sale of Capital Assets	2,703,976	5,084,641			7,788,617
Gain (Loss) on Sale of Capital Assets					
Increase in Net Assets Due to Interagency Transfer					
Decrease in Net Assets Due to Interagency Transfer					
<b>TOTAL OTHER FINANCING SOURCES (USES):</b>	<u>2,160,108</u>	<u>2,355,741,526</u>	<u>261,837,320</u>	<u>16,437,538</u>	<u>2,636,176,492</u>

The accompanying notes to the financial statements are an integral part of this financial statement.

GOVERNMENT-WIDE ADJUSTMENT FUND TYPES

CAPITAL ASSETS ADJUSTMENTS	LONG TERM LIABILITIES ADJUSTMENTS	OTHER ADJUSTMENTS	STATEMENT OF ACTIVITIES
\$	\$	\$	\$
			3,579,072
			1,434,537
			39,631,000
		6,236,042	2,787,050,185
			1,496,510
			0
			1,575,298,280
			118,568,444
			14,151,673
			1,530,671
			244,096,630
			4,172,419
<u>14,797</u>			<u>4,791,009,421</u>
<u>14,797</u>	<u>0</u>	<u>6,236,042</u>	
	2,224,388		634,432,485
			217,976,022
			288,254,377
			4,067,733
			272,309,800
			53,746,036
			1,043,231,686
			12,062,552
			5,993,863
			10,094,356
			8,341,187
			1,799,550
			651,387,152
			15,834,123
			192,238,981
			0
	(126,650,000)		(14,480,277)
	(14,480,277)		365,750,698
	1,344,452		3,510,623
	(7,779,366)		0
(3,379,928,546)			601,776,075
601,776,075			0
	(6,503,313)		(6,503,313)
<u>(2,778,152,471)</u>	<u>(151,844,116)</u>	<u>0</u>	<u>4,361,823,709</u>
<u>2,778,167,268</u>	<u>151,844,116</u>	<u>6,236,042</u>	<u>429,185,712</u>
			3,106,998,122
			(1,716,934,073)
	(1,224,495,000)		0
			13,828,826
			0
(7,788,617)			(658,198)
(658,198)			79,504
79,504			(35,517)
<u>(35,517)</u>			<u>1,403,278,664</u>
<u>(8,402,828)</u>	<u>(1,224,495,000)</u>	<u>0</u>	

**EXHIBIT II**

**COMBINED STATEMENT OF REVENUES, EXPENDITURES, & CHANGES  
IN FUND BALANCES/STATEMENT OF ACTIVITIES - GOVERNMENTAL FUNDS  
(Concluded)**

	GOVERNMENTAL FUND TYPES				
	GENERAL (EXH A-2)	SPECIAL REVENUE (EXH B-2)	DEBT SERVICE (0008)* U/F(0010)	CAPITAL PROJECTS FUND (7604)* U/F (7604)	GOV'T FUNDS TOTAL
<b>Net change in Fund Balances/Net Assets</b>	\$ 800,200	\$ 28,629,426	\$ 99,685,152	\$ 0	\$ 129,114,778
<b>Fund Financial Statement - Fund Balances</b>					
<b>FUND BALANCES, Sept. 1, 2008</b>	1,524,218	1,657,293,666			1,658,817,884
Appropriations Lapsed	(5,196)				(5,196)
<b>FUND BALANCES, Aug. 31, 2009 (Exh. I)</b>	<u>\$ 2,319,222</u>	<u>\$ 1,685,923,092</u>	<u>\$ 99,685,152</u>	<u>\$ 0</u>	<u>\$ 1,787,927,466</u>
<b>Government-wide Statement of Net Assets</b>					
Net Assets/Net Change in Net Assets					
Net Assets-Beginning					
Restatements (Note 14)					
Net Assets-September 1, 2008, as restated					
Net Assets as of August 31, 2009					

\* Appropriated Fund is noted as (XXXX), USAS D23 Fund is noted as U/F (XXXX).

The accompanying notes to the financial statements are an integral part of this financial statement.

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GOVERNMENT-WIDE ADJUSTMENT FUND TYPES

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CAPITAL ASSETS ADJUSTMENTS	LONG TERM LIABILITIES ADJUSTMENTS	OTHER ADJUSTMENTS	STATEMENT OF ACTIVITIES
\$ 2,769,764,440	\$ (1,072,650,884)	\$ 6,236,042	\$ 1,832,464,376
			1,658,817,884
			(5,196)
			1,787,927,466
<u>2,769,764,440</u>	<u>(1,072,650,884)</u>	<u>6,236,042</u>	<u>1,703,349,598</u>
63,694,216,832	(8,329,363,716)	14,757,984	55,379,611,100
(7,924,388)	(15,585,000)		(23,509,388)
<u>63,686,292,444</u>	<u>(8,344,948,716)</u>	<u>14,757,984</u>	<u>55,356,101,712</u>
<u>\$ 66,456,056,884</u>	<u>\$ (9,417,599,600)</u>	<u>\$ 20,994,026</u>	<u>\$ 57,059,451,310</u>

**EXHIBIT III**

**STATEMENT OF NET ASSETS - PROPRIETARY FUNDS  
August 31, 2009**

	(0865)* U/F 0865	ENTERPRISE FUND TOTAL
	\$	\$
<b>ASSETS</b>		
Current Assets:		
Cash on Hand	76,099	76,099
Cash in Bank (Note 3)	25,488,890	25,488,890
Money Market and Similar Funds	325,836,567	325,836,567
Short Term Investments	15,315,669	15,315,669
Due from Other Funds (Note 12)	1,792,819	1,792,819
Receivable:		
Interest and Dividends	412,043	412,043
Accounts Receivable	638,431	638,431
Local Governments	1,584,144	1,584,144
Harris County Toll Road Authority	274,221	274,221
North Texas Tollway Authority	226,429	226,429
Central Texas Regional Mobility Authority	191,735	191,735
Total Current Assets	<u>371,837,047</u>	<u>371,837,047</u>
Non-Current Assets:		
Restricted:		
Cash In State Treasury	21,116	21,116
Investments	114,999,378	114,999,378
Deferred Charges	41,105,896	41,105,896
Capital Assets:		
Non- Depreciable		
Land	638,428,380	638,428,380
Roadways	1,626,790,833	1,626,790,833
Depreciable		
Buildings	8,360,006	8,360,006
less Accumulated Depreciation	(1,268,335)	(1,268,335)
Infrastructure	416,433,397	416,433,397
less Accumulated Depreciation	(39,749,871)	(39,749,871)
Total Non- Current Assets	<u>2,805,120,800</u>	<u>2,805,120,800</u>
Total Assets	<u>3,176,957,847</u>	<u>3,176,957,847</u>
<b>LIABILITIES</b>		
Current Liabilities:		
Payables		
Accounts Payable	707,030	707,030
Payable to Central Texas Regional Mobility Authority	569,534	569,534
Payable to Harris County Toll Road Authority	678,294	678,294
Payable to North Texas Tollway Authority	622,586	622,586
Deferred Revenue	57,749,364	57,749,364
Payable From Restricted Assets-Current Portion	1,859,493	1,859,493
Due to Other Funds (Note 12)	1,879,387	1,879,387
Total Current Liabilities	<u>64,065,688</u>	<u>64,065,688</u>
Non-Current Liabilities:		
Revenue Bonds Payable (Note 5)	1,499,620,484	1,499,620,484
Notes/Loans Payable (TIFIA) (Note 5)	972,092,191	972,092,191
Total Non-Current Liabilities	<u>2,471,712,675</u>	<u>2,471,712,675</u>
Total Liabilities	<u>2,535,778,363</u>	<u>2,535,778,363</u>
<b>NET ASSETS</b>		
Invested in Capital Assets, net of related debt	177,281,735	177,281,735
Restricted for debt service	151,119,459	151,119,459
Unrestricted	312,778,290	312,778,290
Total Net Assets	<u>\$ 641,179,484</u>	<u>\$ 641,179,484</u>

\* Appropriated Fund is noted as (XXXX), USAS D23 Fund is noted as U/F (XXXX)

The accompanying notes to the financial statements are an integral part of this financial statement.

**EXHIBIT IV**

**STATEMENT OF REVENUES, EXPENSES, and CHANGES in NET ASSETS  
- PROPRIETARY FUNDS  
For the Fiscal Year Ended August 31, 2009**

	(0865)* U/F 0865	ENTERPRISE FUND TOTAL
<b>Operating Revenues</b>		
Toll Revenue	\$ 66,362,310	\$ 66,362,310
Total Operating Revenues	<u>66,362,310</u>	<u>66,362,310</u>
<b>Operating Expenses</b>		
Professional Fees and Services	(11,273,671)	(11,273,671)
Materials and Supplies	(2,484,254)	(2,484,254)
Communication and Utilities	(1,563,081)	(1,563,081)
Repairs and Maintenance	(12,102,265)	(12,102,265)
Depreciation Expense	(16,928,145)	(16,928,145)
Prompt Payment Interest	(508)	(508)
Contracted Services-Laborers	(20,781,985)	(20,781,985)
Advertising	(934,509)	(934,509)
Other Operating Expenses	(1,850,506)	(1,850,506)
Total Operating Expenses	<u>(67,918,924)</u>	<u>(67,918,924)</u>
Operating Income (Loss)	<u>(1,556,614)</u>	<u>(1,556,614)</u>
<b>Nonoperating Revenues (Expenses)</b>		
Lease Revenue	12,864	12,864
Interest and Investment Income	10,233,006	10,233,006
Interest and Amortization Expense	(44,601,115)	(44,601,115)
Accretion on Capital Appreciation Bonds	(107,897,303)	(107,897,303)
Net Increase (Decrease) in Fair Value of Investments	140,977	140,977
Other Financing Fees	(354,458)	(354,458)
Other Nonoperating Revenues (Expenses)	17,082	17,082
Total Nonoperating Revenues (Expenses)	<u>(142,448,947)</u>	<u>(142,448,947)</u>
Income (Loss) before Other Revenues, Expenses, Gains/Losses and Transfers	<u>(144,005,561)</u>	<u>(144,005,561)</u>
<b>Other Revenues, (Expenses), Gains/(Losses) and Transfers</b>		
Capital Contributions	8,433,133	8,433,133
Operating Transfer In [Note 1 H(7)]	19,317,014	19,317,014
<b>Total Other Revenues, (Expenses), Gains/(Losses) and Transfers</b>	<u>27,750,147</u>	<u>27,750,147</u>
Change in Net Assets	<u>(116,255,414)</u>	<u>(116,255,414)</u>
Total Net Assets, September 1, 2008	757,434,898	757,434,898
Total Net Assets, August 31, 2009	<u>\$ 641,179,484</u>	<u>\$ 641,179,484</u>

\* Appropriated Fund is noted as (XXXX). USAS D23 Fund is noted as U/F (XXXX)

The accompanying notes to the financial statements are an integral part of this financial statement.

**EXHIBIT V**

**STATEMENT OF CASH FLOWS - PROPRIETARY FUNDS  
For the Fiscal Year Ended August 31, 2009**

<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>	(0865)* U/F 0865	ENTERPRISE FUND TOTAL
	\$	\$
Receipts from Customers	94,626,484	94,626,484
Payments to Vendors	(45,733,193)	(45,733,193)
Payments to Toll Partners	(27,941,444)	(27,941,444)
Net Cash Provided by Operating Activities	<u>20,951,847</u>	<u>20,951,847</u>
<b>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES</b>		
Proceeds from Series 2009 Bond Issue	143,041,160	143,041,160
Proceeds from Lease Revenue	12,864	12,864
Proceeds from Capital Contributions	760,866	760,866
Payments for Interest on Debt Issue	(43,155,893)	(43,155,893)
Payments for Additions to Land and Construction in Progress	(23,835,693)	(23,835,693)
Payments for Principal on Debt	(150,000,000)	(150,000,000)
Payments for Remarketing Fees and Other Costs	(354,458)	(354,458)
Net Cash Used by Capital and Related Financing Activities	<u>(73,531,154)</u>	<u>(73,531,154)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Proceeds from Sales of Investments	111,320,870	111,320,870
Proceeds from Interest and Investment Income, net of fees	10,908,758	10,908,758
Payments to Acquire Investments	(105,373,984)	(105,373,984)
Net Cash Provided by Investing Activities	<u>16,855,644</u>	<u>16,855,644</u>
Net Decrease in Cash and Cash Equivalents	<u>(35,723,663)</u>	<u>(35,723,663)</u>
Cash and Cash Equivalents - September 1, 2008	387,146,335	387,146,335
Cash and Cash Equivalents - August 31, 2009	<u>\$ 351,422,672</u>	<u>\$ 351,422,672</u>

**EXHIBIT V**

**STATEMENT OF CASH FLOWS - PROPRIETARY FUNDS (CONCLUDED)**  
**For the Fiscal Year Ended August 31, 2009**

	(0865)* U/F 0865	ENTERPRISE FUND TOTAL
<b>Reconciliation of Operating Income to Net Cash Provided by Operating Activities</b>	\$	\$
Operating Income (Loss)	<u>(1,556,614)</u>	<u>(1,556,614)</u>
Adjustments to Reconcile Operating Income to Net Cash Provided by Operating Activities		
Depreciation Expense	16,928,145	16,928,145
Operating Income and Cash Flow Categories Classification Differences		
Changes in Assets and Liabilities:		
(Increase) Decrease in Receivables	(308,765)	(308,765)
Increase (Decrease) in Payables	5,380,688	5,380,688
Increase (Decrease) in Due from Other Funds	(1,485,642)	(1,485,642)
Increase (Decrease) in Deferred Revenue	<u>1,994,035</u>	<u>1,994,035</u>
Total Adjustments	<u>22,508,461</u>	<u>22,508,461</u>
Net Cash Provided by Operating Activities	<u>\$ 20,951,847</u>	<u>\$ 20,951,847</u>

**NONCASH INVESTING, CAPITAL, AND FINANCING ACTIVITIES:**

The Enterprise Fund received \$26,989,280 of noncash transfers for the year ended August 31, 2009. Of this amount, \$7,033,329 was capitalized and \$19,955,951 was expensed for the year.

**Reconciliation of Cash**

Cash on Hand	76,099
Cash in Bank	25,488,890
Money Market and Similar Funds	\$ 325,836,567
Restricted Cash and Cash Equivalents in State Treasury	<u>21,116</u>
	<u>\$ 351,422,672</u>

\* Appropriated Fund is noted as (XXXX), USAS D23 Fund is noted as U/F(XXXX).

The accompanying notes to the financial statements are an integral part of this financial statement. Note 1 describes the accounting policy on cash and cash equivalents.



# Notes to the Financial Statements

## NOTES TO THE FINANCIAL STATEMENTS

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### *NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES*

#### A. Scope of Entity

The Texas Department of Transportation (TxDOT), “the department,” governed by the five-member Texas Transportation Commission and an executive director selected by the “Commission,” is an agency of the State of Texas. Its operations are conducted by a central office with twenty-two functional divisions, five offices, and twenty-five geographic districts. Further details are provided in the addendum.

The Texas Legislature created the State Highway Department in 1917 to grant financial aid to counties for highway construction and maintenance.

The Sixty-fourth Legislature (1975) created the State Department of Highways and Public Transportation by combining the authorities and responsibilities of the Texas Mass Transportation Commission and the State Highway Department. It also established the Public Transportation Fund and gave the department the responsibility for its administration.

On May 5, 1976, the functions of the Governor's Office of Traffic Safety were transferred to the department by Executive Order D.B. 28.

The Seventy-second Legislature (1991) created the Texas Department of Transportation (TxDOT) by merging the State Department of Highways and Public Transportation with the Texas Department of Aviation (effective September 1, 1991) and the Texas Motor Vehicle Commission (effective September 1, 1992).

H.B. 2845, signed June 1995, established the seven member Texas Automobile Theft Prevention Authority in the Texas Department of Transportation. The Authority is not an advisory body to TxDOT. TxDOT provides the Authority with staffing assistance and related administration services to implement Authority decisions.

S.B. 370, signed June 1997, abolished the Texas Turnpike Authority and created the Texas Turnpike Authority Division within the Texas Department of Transportation, along with the creation of regional tollway authorities. This bill also established the State Infrastructure Bank.

#### Blended Component Units

The Texas Transportation Corporations, created pursuant to H.B. 1986 - Article 15281 to perform many functions normally undertaken by the department, have been included in the reporting entity because it is the professional judgment of management that the department exercises sufficient authority over assets, operations, and management to warrant their inclusion. As a result, the Texas Transportation Corporations are shown as a special revenue fund, Fund 999 [See Note 1C-(4)]. Even though the Texas Transportation Corporations are a part of the Texas Department of Transportation accounting entity, inclusion of these corporations should not be taken as an admission for legal proceedings that the state is liable for debts of these corporations, nor is entitled to the assets of these corporations.

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### Discrete Component Units

No component units have been identified which require discrete presentation in the accompanying financial statements.

### B. Basis of Presentation

The accompanying financial statements were prepared in conformity with procedures specified by the Texas State Comptroller's Office. The primary purpose of this report is to comply with legislative requirements to provide data for the Comptroller's Office. This data are combined by the Comptroller's Office with similar data from the other state agencies and activities in order to prepare a Comprehensive Annual Financial Report for the state.

Due to significant changes related to Governmental Accounting Standards Board Statement No. 34, Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments, the Comptroller of Public Accounts does not require the accompanying annual financial report to be in compliance with generally accepted accounting principles (GAAP). The financial report will be considered for audit by the State Auditor as part of the State of Texas Comprehensive Annual Financial Report; therefore, an opinion has not been expressed on the financial statements and related information contained in this report.

### C. Fund Structure

The financial statements are organized on the basis of funds, each of which is reported as a separate accounting entity within the department. Each fund's operations are accounted for in a separate set of accounts that comprise its assets, liabilities, fund equity, revenues, and expenditures/expenses. These funds are reported separately within the department.

The department's funds fall under three categories. The first category, Governmental Fund Type and Government-wide Adjustment Fund Types, includes General, Special Revenue, Capital Projects and Government-wide Adjustment Fund Types. The second category, Proprietary Funds Types, includes Enterprise Funds. The third category, Fiduciary Fund Types, includes Agency Funds.

(1) Governmental Fund Type and Government-wide Adjustment Fund Types - General and Special Revenue Funds are used to account for the department's appropriations from the state's General Revenue Fund and proceeds from specific revenue sources that are legally restricted to expenditures for specified purposes. Capital Projects Funds are established to account for resources that are to be used to acquire major long-lived capital facilities. Their principal purpose is to assure the economical and legal expenditure of the resources, but they also serve as cost accounting mechanisms for the accumulation of the cost of major capital outlay projects. Adjustment Fund Types are used to convert governmental fund types' from modified to full accrual.

(a) General Revenue Fund (001) - The General Revenue Fund is used to account for all financial resources of the state except those required to be accounted for in another fund. As of August 31, 1993, the Texas Highway Beautification Fund was consolidated into the General Revenue Fund. As of September 1, 2001, the Texas

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Collegiate License Plate Account and Suspense Fund 900 were consolidated into the General Revenue Fund. The Texas Collegiate License Plate Account and Suspense Fund 900 were previously presented as Agency Funds.

- 1.) Texas Highway Beautification Fund Account (071) - This account was established to implement the Texas highway beautification program. Revenues are obtained from outdoor advertising license and permit fees.
  - 2.) Traffic Safety-Crash Records Information Systems Account (036) – This account is used to account for expenditures pertaining to the crash records information system. In fiscal year 2008, this program was moved from the Department of Public Safety to the Texas Department of Transportation.
  - 3.) Suspense Fund (900) - This fund is used to temporarily hold and account for receipts, until the correct disposition of the items is determined.
  - 4.) Texas Collegiate License Plate Account (5015) - This fund is used to receive and account for fees charged from special collegiate license plates.
  - 5.) Specialty License Plate Account (5140) – This fund is used to receive and account for fees charged from special license plates.
- (b) State Highway Fund (006) - This fund is restricted to expenditures for the building, maintaining, and policing of state highways. It derives its financing primarily from legally dedicated revenues such as motor fuels tax and vehicle registration fees, and from federal reimbursements for selected construction projects.
- (c) State Infrastructure Bank (099) - This account receives federal along with state matching funds. This account also receives loan principal and interest repayments. These receipts are used for loans to public and private entities to encourage the development of transportation projects and facilities. As these loans are repaid, these repayments are deposited into a separate program cost account in the State Infrastructure Bank account.
- (d) Texas Mobility Fund (365) - This fund was created to account for the construction, reconstruction, acquisition, and expansion of state highways, including costs of design and acquisition of right-of-way. This fund may also be used to provide state participation in the payment of a portion of the costs of constructing and providing publicly owned toll roads and other public transportation projects. This fund is to be financed primarily from the sale of obligations of the state, appropriations made by the legislature of revenue, including taxes, money not otherwise dedicated towards construction projects and other money received from a regional mobility authority that determines it has surplus revenue from turnpike projects and chooses to send the excess to the fund.
- (e) Federal American Recovery and Reinvestment Fund (369) – In order to maximize accountability and transparency of federal stimulus funds, this fund was created during fiscal year 2009 to record, track, and report the receipt and disbursement of Federal American Recovery and Reinvestment (ARRA) funds.

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- (f) Local Fund (999) - This fund presents the combined activities of the one transportation corporation [See Note 1C-(4)].
- (g) Debt Service Fund (008) - This fund is used to pay debt service on State Highway Fund bonds.
- (h) Capital Projects Fund (7604) - This fund is used to account for general obligation bonds issued by the Texas Public Finance Authority. The purpose of these bonds is to provide financial assistance to counties for roadway projects serving border colonias. The program is aimed at providing access roads to colonias to connect residents to other public roads and not necessarily for paving all roads and streets within any particular colonia. TxDOT is responsible for administering this program in cooperation with the Office of the Governor, Secretary of State and the Texas A&M Center for Housing and Urban Development.
- (i) Capital Asset Adjustment Fund Type - The Capital Asset Adjustment Fund Type will be used to convert governmental fund types' capital assets from modified accrual to full accrual.
- (j) Long - Term Liabilities Adjustment Fund Type - The Long - Term Liabilities Adjustment Fund Type will be used to convert governmental fund types' debt from modified accrual to full accrual. The composition of this Adjustment Fund Type is discussed in Note 5 under employees' compensable leave, general obligation bonds, revenue bonds, and pass-through toll payables.
- (k) Other Adjustment Fund Type - The Other Adjustments Fund Type will be used to convert all other governmental fund types activity from modified accrual to full accrual. TxDOT will use this column to convert FHWA deferred revenue, that is collectable but not collectable within one year, to revenue under full accrual.
- (2) Proprietary Fund Types - Enterprise Funds are used to account for any activity for which a fee is charged to external users for goods or services. Activities must be reported as enterprise funds if any one of the three following criteria is met: The activity is financed with debt that is secured solely by a pledge of the gross revenues from fees and charges of the activity. Laws and regulations require that the activity's costs of providing services, including capital costs (such as depreciation or debt service), be recovered with fees and charges. The pricing policies of the activity establish fees and charges designed to recover its costs, including capital costs.
- (a) Turnpike Authority Project Disbursing Account (865)-This fund shows the local and treasury activity of the Central Texas Turnpike System.
- (3) Fiduciary Fund Type - Agency Funds are used to account for assets held in a custodial capacity for other entities and do not involve measurement of results of operations.
- (a) General Revenue Fund (001) - This fund receives certificate of title fees, oversize/overweight permit receipts, sales tax receipts and other collections of monies that are used to fund other state entities. During fiscal year 2009, this fund received \$ 68 in pay telephone receipts and no vending machine receipts.
- (b) Proportional Registration Distributive Trust Fund (021) - This fund is used primarily to collect and distribute

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registration fees from trucking companies that operate in more than one state. These fees are distributed to the individual states based on mileage driven.

- (c) Child Support Deductions – Suspense (807) – This fund is a holding account where child support payroll deductions are held until disbursed.
  - (d) Employees' Savings Bond Account (901) - This fund receives and disburses employee payroll deductions for U.S. Savings Bonds.
  - (e) County, Political Subdivision, Local Government Road/Airport Trust Account (927)– This fund is used to hold money paid in advance by cities, counties, and others to reimburse the department for expenditures on specific projects from the State Highway Fund (006).
  - (f) Direct Deposit Correction Account (980 and 9014) - These funds are used to temporarily hold and account for direct deposits that are unable to be processed, until the correct disposition of the items is determined.
- (4) Component Units - The implementation of GASB #14 requires government entities to describe any component units of the primary government, as well as the method used to report their activities. The one Texas Transportation Corporation is considered a component unit, per GASB #14. It is presented in the financial statements of the department as a special revenue fund, Fund 999.

This transportation corporation is a nonprofit organization which may (1) contract with the department to construct and/or improve projects designated by the department, (2) sell the projects to the department in accordance with the terms of the contract, and (3) contract with the department to supervise construction and provide construction management services for highways being constructed on behalf of the department. These projects must be intended to become part of the federal or state highway system, and as such, the department will assume responsibility for their maintenance.

This corporation may issue bonds and notes to finance the cost of its projects. These bonds and notes must be approved by the Attorney General and state on their face that they are not obligations of the State of Texas. As of August 31, 2009 this corporation had no bond issues outstanding. The Commission approves the creation of the corporation, approves the articles of incorporation, appoints directors, and approves by-laws. At any time, the Commission may terminate and dissolve the corporation. In the event of dissolution or liquidation of the corporation, all assets shall be turned over to the department.

#### D. Basis for Accounting

The basis of accounting determines when revenues and expenditures are recognized in the accounts reported in the financial statements. The accounting and financial reporting treatment applied to a fund is determined by its measurement focus. All governmental fund types and agency funds are accounted for on the modified accrual basis of accounting. Revenues are recognized when they become both measurable and available. Expenditures are generally

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recognized when the related fund liability is incurred. Governmental adjustment fund types that will build the government-wide financial statements are accounted for using the full accrual method of accounting. This includes capital assets and unpaid employee compensable leave.

A proprietary fund is accounted for on the accrual basis of accounting. Under the accrual basis of accounting, revenues are recognized when earned and expenses are recognized at the time liabilities are incurred. A proprietary fund distinguishes operating from non-operating items. Operating revenues and expenses result from providing services or producing and delivering goods in connection with the proprietary fund's principal ongoing operations. Operating expenses for an enterprise fund include the cost of sales and services, administrative expenses, and depreciation on capital assets.

E. Budgets and Budgetary Accounting

(1) General Budget Policies

The Texas Department of Transportation's budget is prepared on a performance-based concept, and is represented by biennial appropriations authorized by the legislature, and approved by the governor. Encumbrance accounting is employed for budgetary control purposes.

(2) Encumbrances

An encumbrance is defined as a purchase order for equipment ordered but not yet received as of the end of the fiscal year, contracts awarded for buildings and land, or contracts awarded to reimburse grantees. Highway construction contracts, spot purchases, and other contract obligations extending beyond the current year are not reported as encumbrances, in accordance with Comptroller requirements. Encumbrances are included in the accounts to reserve a portion of fund equity for future obligations. At year end, encumbrances are reported as a category of the fund equity section of the balance sheet.

F. Assets, Liabilities and Fund Balance

(1) Cash and Cash Equivalents

Short-term highly liquid investments with an original maturity of three months or less are considered cash equivalents. On the Statement of Cash Flows, cash and cash equivalents are considered to be cash in bank, cash in State Treasury, and money market funds with original maturities of three months or less from the date of acquisition.

(2) Restricted Assets

Restricted assets include monies or other resources restricted by legal or contractual requirements. These assets include proceeds of enterprise fund notes/loans, revenue bonds, and revenues set aside for statutory or contractual requirements.



(3) Consumable Inventories

Inventory items are reported at a weighted-average cost. The inventory consists of supplies and roadway materials on hand for future use. Governmental accounting principles allow the costs to be reported as an expenditure of the purchasing fund when the items are acquired or deferred until the items are used. Comptroller policy requires that the consumption method of accounting be used to account for inventories and prepaid items, and that the cost of these items be expensed when the items are consumed. Inventories are also reported in the fund equity section as a reservation of fund equity, to show they do not constitute future spendable resources, even though they are a component of current assets. Included in inventories were prepaid postage items totaling \$326,132 as of August 31, 2009.

(4) Notes/Loans Receivable

**The Fund 1 account represents loans to:**

City of Castroville		\$216,046
City of Hondo		\$154,161
City of Paris		\$26,354
Zapata County		\$10,362
	<b>Total Fund 1</b>	<u>\$406,923</u>
	Of the total in Fund 1, receivables due within one year from August 31, 2009	<u>\$52,348</u>

**The Fund 6 account represents loans to:**

Alamo Regional Mobility Authority		\$11,716,110
Cameron County Regional Mobility Authority		\$2,471,314
Camino Real Regional Mobility Authority		\$512,074
North East Texas Regional Mobility Authority		\$3,268,301
North Texas Tollway Authority		\$4,600,000
	<b>Total Fund 6</b>	<u>\$22,567,799</u>
	In Fund 6, these amounts are considered long term receivables	

**The Fund 99 account represents loans to:**

City of Anthony		\$213,104
City of Atlanta		\$743,148
City of Baytown		\$1,253,310
Brazoria County		\$218,179
City of Cameron		\$416,890
City of Center		\$396,165
City of Clyde		\$28,492
City of Corpus Christi		\$1,250,000
Culleoka Water Supply Corporation		\$1,329,418
City of Domino		\$60,000
Duck Creek Water Supply Corporation		\$202,438
City of Easton		\$87,891
City of El Paso		\$10,435,719



Fund 99 account continued:

Goliad County	\$137,545
City of Greenville	\$1,755,000
City of Gregory	\$53,761
City of Henderson	\$29,995
Hidalgo County	\$2,295,818
Hopkins County	\$795,236
City of Horizon City	\$169,619
City of Kennedale	\$125,247
City of Kerrville	\$2,610,070
City of Kyle	\$14,000,000
City of Laredo	\$19,500,000
City of Liberty	\$1,374,008
City of Mesquite	\$4,454,246
Mission Redevelopment Authority	\$2,848,499
North Texas Tollway Authority	\$135,000,000
City of Pinehurst	\$178,656
City of Pottsboro	\$463,479
City of Robstown	\$38,393
City of Rockdale	\$471,484
City of Rosenberg	\$1,450,000
City of Round Rock	\$35,758,865
City of Seguin	\$239,298
City of Sinton	\$106,249
City of Socorro	\$318,500
City of Stamford	\$300,000
Taylor County	\$79,938
City of Weatherford	\$477,062
City of West Columbia	\$139,402
City of Winnsboro	\$115,935
Wise County	\$3,190,000
Total Fund 99	\$245,111,059
Of the total in Fund 99, amount due within one year from August 31, 2009	\$12,273,364

(5) Capital Assets

Assets with an initial, individual cost at or above the thresholds established by the Texas Comptroller of Public Accounts and having an estimated useful life in excess of one year are capitalized. These assets are capitalized at cost if purchased, or if not purchased, at the appraised fair value of the assets as of the date of acquisition. Purchases of assets by governmental funds are reported as expenditures. Depreciation is reported on all "exhaustible" assets. "Inexhaustible" assets such as land are not depreciated. The roads and highway system for which the Texas Department of Transportation is responsible are reported on the modified basis. Assets, including bridges, are depreciated over the estimated useful life of the asset using the straight-line method.

All capital assets acquired by proprietary funds are reported at cost or estimated historical cost if actual historical cost is not available. Donated assets are reported at fair market value on the date of acquisition. Interest and

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amortization expenses, net of interest income, incurred during construction are capitalized. As permitted by GASB Statement No. 34, Basis Financial Statements – and Management’s Discussion and Analysis – for State and Local Governments (“GASB 34”), the State of Texas has adopted the modified approach for reporting it’s highway system. Depreciation will be calculated on bridges and infrastructure assets not included as part of the highway system.

The Department reports condition assessments on the highway system based solely on the results of its Texas Maintenance Assessment Program (TxMAP). TxMAP involves yearly condition assessments (GASB requirement is every three years) which determine the overall condition levels of the Interstate and Non-Interstate highway systems. The Texas Transportation Commission has adopted condition levels of 80% for the Interstate system and 75% for the Non-Interstate system based on condition assessments conducted under TxMAP. In fiscal year 2008, the Department began evaluating the Central Texas Turnpike System (CTTS) using TxMAP and adopted a minimum condition level of 80% for the CTTS.

(6) Non-Current Assets

For special revenue funds, the category of “Other Non-Current Assets” represents long-term interest receivables on Notes and Loans. For the proprietary funds, the costs associated with debt issuance totaled \$59,351,773. These costs are not reported as an expense of the period in which they were incurred, but instead are reported as an adjustment to interest expense throughout the period during which the related debt is outstanding. Unamortized deferred charges equaled \$41,105,896 as of August 31, 2009.

(7) Accounts Payable

Accounts Payable represents the liability for the value of assets or services received at the balance sheet date for which payment is pending.

(8) Contracts Payable

Contracts Payable represents the amount of contract retainage held in the State Highway Fund or in a contractor's local bank on highway construction contracts. State law permits the department to allow the contractor to have the retainage held in a bank of his choice rather than in the state treasury. Departmental policy limits this to individual contracts exceeding \$300,000. For contracts under \$300,000, the retainage is kept in the state treasury. In either case, the retained cash still belongs to the State Highway Fund until released to the contractor. By law, interest earned on the bank deposits belongs to the contractors.

(9) Deferred Revenues

In fiscal year 2008, TxDOT received \$3,197,104,248 in concession receipts from the North Texas Tollway Authority (NTTA) for the SH 121 concession and received \$25,750,778 of concession receipts from Cintra Zachry Construction for the SH 130 concession for Segments 5 and 6. These revenues will be recognized over the life of the concession, and \$63,942,085 was recognized this fiscal year. Please see Note 1 H (4). These concession receipts along with deferred federal revenue, construction and other escrow accounts and other funds collected but not earned

make up this balance.

(10) Employee's Compensable Leave Balances

Employees' Compensable Leave Balances represent the liability that becomes "due" upon the occurrence of relevant events such as resignations, retirements, and uses of leave balances by covered employees. Liabilities are reported separately as either current or non-current in the statement of net assets.

(11) Bonds Payable – General Obligation Bonds

General Obligation bonds relate to the Texas Mobility Fund (365) and are accounted for in the Long-Term Liabilities Adjustment Fund Type. Premiums and discounts are reported as "interest and investment income" in the period the bonds are sold. Payables are reported separately as either current or non-current in the statement of net assets.

(12) Bonds Payable – Revenue Bonds

Revenue bonds are accounted for in the State Highway Fund (006) and the Turnpike Authority Project Disbursing Account (865). The Revenue bonds related to the State Highway Fund are accounted for in the Long-Term Liabilities Adjustment Fund Type. Premiums and Discounts are reported as "interest and investment income" in the period the bonds are sold. The bonds payable related to the Turnpike Authority Project Disbursing Account are reported at par less unamortized discount or plus unamortized premium. Interest expense is reported on the accrual basis, with amortization of discount or premium. Payables are reported separately as either current or non-current in the statement of net assets.

(13) Pollution Remediation Obligations

Pollution Remediation Obligations are accounted for in the long-term liabilities adjustment column for governmental activities. These obligations address the current or potential detrimental effects of existing pollution by participating in pollution remediation activities. The obligations are reported separately as either current or non-current in the statement of net assets.

(14) Reservations of Fund Balance

- (a) Reserved for Encumbrances - This represents commitments of the value of contracts awarded or assets ordered prior to year-end, but not received as of that date. Encumbrances are not included with expenditures or liabilities. They represent current resources designated for specific expenditures in subsequent operating periods.
- (b) Reserved for Imprest Accounts - This represents funds held for travel advances and petty cash as of August 31, 2009.
- (c) Reserved for Inventories - This represents the amount of inventories held to be used in future periods.

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(d) Unreserved - This amount represents the unexpended balance at year end which is available for use in subsequent years.

G. Net Assets – The difference between fund assets and liabilities is ‘Net Assets’ on the government-wide, proprietary fund statements.

(1) Invested In Capital Assets, Net of Related Debt

Invested in capital assets, net of related debt, consists of capital assets, net of accumulated depreciation and reduced by outstanding balances for bonds, notes, and other debt (net of unspent proceeds) that are attributed to the acquisition, construction, or improvement of those assets.

(2) Restricted Net Assets

Restricted net assets result when constraints placed on net assets use are either externally imposed by creditors, grantors, contributors, and the like, or imposed by law through constitutional provisions or enabling legislation. Restricted assets expected to be used for debt service payments in the next twelve months are classified as current assets. There were no restricted net assets as of August 31, 2009.

(3) Unrestricted Net Assets

Unrestricted net assets consist of net assets, which do not meet the definition of the two preceding categories. Unrestricted net assets often have constraints on resources, which are imposed by management, but which can be removed or modified. There were no unrestricted net assets as of August 31, 2009.

H. Revenues, Expenditures, Transfers, and Restatements

(1) Taxes

This represents state sales tax from the sale of lubricants (6.25%), as estimated by the Texas Comptroller of Public Accounts, which is deposited to the State Highway Fund.

(2) Federal Revenues

The department receives a substantial portion of its revenues from the Federal Highway Administration, which reimburses the department for certain costs incurred for engineering, construction, right-of-way acquisition, research activities, and general and administrative costs. Federal reimbursement is based on a percentage of the costs expended from state funds on approved projects. The percentage of reimbursement for allowable costs varies from 50 to 100 percent.

The reimbursements by the Federal Highway Administration are based on apportionments to the states from the Federal Highway Trust Fund on a federal fiscal year basis. State plans for construction projects must be approved by



the Federal Highway Administration within a given period to be eligible for the apportionments.

<u>Year</u>	<u>Apportionments</u>
2009	\$ 2,136,273,828
2008	2,756,958,272
2007	2,624,581,025
2006	2,788,187,765
2005	2,746,192,572

The department also receives federal funds from the National Highway Traffic Safety Administration in support of the State Traffic Safety Program. Federal participation consists of reimbursement for costs expended on approved traffic safety projects.

Additionally, the department receives funds from the U.S. Federal Transit Administration (FTA) for costs incurred in the administration and technical support of the Public Transportation Program. The FTA sets the maximum amount allowable each fiscal year, and the department is reimbursed for its administrative expenditures up to that amount. The department also receives funds from FTA in support of Rural Public Transportation Projects and the Improved Mobility of Elderly Persons and Persons with Disabilities.

Finally, the department receives federal funds from the Federal Aviation Administration for the airport improvement program and receives some federal funds directly from the U.S. Department of Transportation for the state and community highway safety program.

(3) Federal Pass Through Revenues

Federal pass through revenues represent amounts passed through to the department from the Texas Department of Public Safety for Department of Homeland Security public assistance grants, from the Texas Health and Human Services Commission for Department of Health and Human Services medical transportation program grants, from the Texas Commission on Environmental Quality for Environmental Protection Agency performance partnership grants, and from the Texas Facilities Commission for General Services Administration federal surplus personal property. See Schedule 1A.

(4) Licenses, Fees, and Permits

This account includes certificate of title fees, motor vehicle registration fees, and outdoor advertising license and permit fees. The Certificate of Title Act is administered by the department, with the various counties of the state acting as its agent. Twenty-eight dollars or \$33.00 is charged for the issuance or reissuance of a Certificate of Title. Fifteen or twenty dollars goes to General Revenue Fund Account 5071-Emission Reduction Plan. The county retains \$5.00 and remits the remaining \$8.00: Three dollars (\$3) to the State Highway Fund, and five dollars (\$5) to the General Revenue Fund.

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Motor vehicle registration fees are collected by the county tax assessor-collector and remitted to the department after service fees and a statutory apportionment to the County Road and Bridge Fund, a non-Texas Department of Transportation activity, are deducted. The service fee is \$1.90 for each receipt issued. The apportionments to a County Road and Bridge Fund are 100 percent of the first \$60,000 of collections net of service fees; 100 percent of net collections equal to \$350 per mile of county-maintained roads up to 500 miles (\$175,000); 70% of the 5% of the tax and penalties collected on the sales of motor vehicles in the county during the preceding calendar year; and 50 percent of the next \$250,000 of net collections. Thus the maximum amount apportioned to any County Road and Bridge Fund is \$360,000 plus 70% of the 5% of the preceding year's motor vehicle sales tax collections. The remainder of the fees is remitted by the counties to the department for deposit in the State Highway Fund.

For fiscal year 2005, counties retained 100% of the 5% of their Motor Vehicle Sales Tax allocation from their Vehicle Registration collections as part of the county road and bridge formula. Beginning in fiscal year 2006, counties began to retain 10% of the motor vehicles sales tax allocation directly from motor vehicle sales tax collections while the remainder continues to be retained from vehicle registration fees. This annual reallocation will continue until the motor vehicle sales tax allocation is fully funded from Motor Vehicle Sales tax collections.

In fiscal year 2008, TxDOT received \$3,197,104,248 in concession receipts from the North Texas Tollway Authority (NTTA) for the SH 121 concession and received \$25,750,778 of concession receipts from Cintra Zachry Construction for the SH 130 concession for Segments 5 and 6. The State's comprehensive development agreements with these entities provides for the leasing of the 'right' to build and operate a toll road to the entity for a specified period of time. Under these two concession agreements, the toll road reverts back to the state at the end of the 50 year period. This concession revenue is restricted to use only for benefit of the various regions, but belongs to the State. At the present time, the Governmental Accounting Standards Board (GASB) has not formed an opinion on the accounting for these upfront payments, but plans to in the near future. Since GASB has not formed an opinion, TxDOT will amortize the concession revenue over the life of the concession for financial reporting purposes, which seems in line with how other governmental entities are handling similar upfront revenue from Public-Private Partnerships. Neither of these receipts was amortized in fiscal year 2008. However, in fiscal year 2009, \$63,942,085 of the SH 121 concession receipt was recognized as revenue. None of the SH 130 concession receipt was recognized as revenue during fiscal year 2009.

The Texas Mobility Fund fee revenue is comprised of United We Stand License Fees, Motor Vehicle Inspection Fees, Driver Record Information Fees, Driver License Fees, and Certificate of Title Fees.

Most revenues in the Texas Highway Beautification fund account in the General Revenue Fund are obtained from outdoor advertising license and permit fees.

(5) Other Revenues

This account includes collection of damages which are recognized on the modified accrual basis, recognizing the receivable and revenue when the damages occurred, rather than when collected.

Section 201.109 of the Transportation Code concerning Revenue Enhancement states that the department shall

adopt a program to enhance existing, and to generate alternate, sources of revenue. In accordance with this, the department has initiated an action plan to enhance revenue by leasing right-of-way, such as rest areas, to commercial enterprises.

The department, through its toll road operations, has entered into agreements with local governments whereby the local governments transfer funds to the department to fund purchases of right of way land and related costs. In some instances, the funds are paid for in advance by the local governments. TxDOT policy is to defer recognition of this revenue until the right of way parcels are purchased. Recognition of these monies paid in advance by local governments is contingent upon the department purchasing the parcels for the stated purpose in the agreement.

(6) Pass-Through Expenditures

During fiscal year 2009, the department made numerous GASB 24 Federal and State Pass-Through payments to different agencies. See Schedule 1A and Schedule 1B.

(7) Operating Transfers In/Out

During fiscal year 2009, the department had numerous transfers between funds and agencies. Individual interfund and intrafund transfers at August 31, 2009, were as follows:

	<u>TRANSFERS IN</u>	<u>TRANSFERS OUT</u>	<u>REFERENCE</u>
\$	\$		
Appd Fund 0001, D23 Fund 0001:			
(Agency 902, Appd Fund 0001)	1,568,530		(a)
(Agency 902, Appd Fund 0001)		2,862,306	(b)
Total Transfers for D23 Fund 0001	1,568,530	2,862,306	
Appd Fund 0006, D23 Fund 0006:			
(Agency 241, Appd Fund 0006)		967,154	(c)
(Agency 302, Appd Fund 0006)		6,719,399	(d)
(Agency 320, Appd Fund 0006)		6,829,352	(e)
(Agency 347, Appd Fund 0507)		316,254	(f)
(Agency 347, Appd Fund 0735)		4,678	(f)
(Agency 360, Appd Fund 0006)		3,884,670	(g)
(Agency 405, Appd Fund 0006)		612,034,309	(h)
(Agency 529, Appd Fund 0006)		76,082,408	(i)
(Agency 582, Appd Fund 0006)		68,792,707	(j)
(Agency 601, Appd Fund 0008)		261,837,320	(k)
(Agency 601, Appd Fund 0365)	599,980,487		(l)
(Agency 601, Appd Fund 0865)		19,317,014	(m)



	<u>TRANSFERS IN</u>	<u>TRANSFERS OUT</u>	<u>REFERENCE</u>
	\$	\$	
(Agency 701, Appd Fund 0006)		50,000,000	(n)
(Agency 727, Appd Fund 0001)		7,306,015	(o)
(Agency 902, Appd Fund 0001)	2,226,424,339		(p)
Total Transfers for D23 Fund 0006	<u>2,826,404,826</u>	<u>1,114,091,280</u>	
Appd Fund 0008, D23 Fund 0010:			
(Agency 601, Appd Fund 0006)	261,837,320		(k)
Total Transfers for D23 Fund 0010	<u>261,837,320</u>		
Appd Fund 0036, D23 Fund 0036:			
(Agency 454, Appd Fund 0036)	749,908		(q)
Total Transfers for D23 Fund 0036	<u>749,908</u>		
Appd Fund 0365, D23 Fund 0375/ 0377:			
(Agency 601, Appd Fund 0006)		599,980,487	(l)
Total Transfers for D23 Fund 0375/0377		<u>599,980,487</u>	
Appd Fund 0865, D23 Fund 0865:			
(Agency 601, Appd Fund 0006)	19,317,014		(m)
Total Transfers for D23 Fund 0865	<u>19,317,014</u>		
Appd Fund 7604, D23 Fund 7604:			
(Agency 347, D23 Fund 7604)	16,437,538		(r)
Total Transfers for D23 Fund 7604	<u>16,437,538</u>		
Total (Exh.II & Exh.IV)	<u>\$ 3,126,315,136</u>	<u>\$ 1,716,934,073</u>	

- (a) This reflects amounts transferred from the Comptroller's Office to the General Revenue Fund in accordance with H.B. 1, 80<sup>th</sup> Legislature, R.S., Section VII-27, Rider 28.
- (b) This reflects amounts transferred to the Comptroller's Office in accordance with Texas Government Code 2175.191.
- (c) This reflects amounts provided from the State Highway Fund to the Judiciary Section of the Texas Comptroller of Public Accounts, in accordance with statutory requirements.

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- (d) This reflects amounts provided from the State Highway Fund to the Attorney General's Office, in accordance with statutory requirements.
  - (e) This reflects amounts provided from the State Highway Fund to the Texas Workforce Commission, in accordance with statutory requirements.
  - (f) This reflects amounts provided from the State Highway Fund for the Master Lease Purchase Program (MLPP) related to equipment capital leases for the aircraft equipment capital leases. Even though this agency makes these MLPP payments, the associated long-term liability is reported on the financial statements of the Texas Public Finance Authority.
  - (g) This reflects amounts provided from the State Highway Fund to the State Office of Administrative Hearings, in accordance with statutory requirements.
  - (h) This reflects amounts provided from the State Highway Fund to the Department of Public Safety, in accordance with statutory requirements.
  - (i) This reflects amounts provided from the State Highway Fund to the Health and Human Services Commission, in accordance with statutory requirements.
  - (j) This reflects amounts transferred from the State Highway Fund to the Texas Commission on Environmental Quality, in accordance with statutory requirements.
  - (k) This reflects amounts transferred from the State Highway Fund to the State Highway Debt Service Fund.
  - (l) This reflects the amounts transferred from the Texas Mobility Fund to the State Highway Fund to speed up the completion of various transportation projects.
  - (m) This reflects amounts transferred from the State Highway Fund to the Turnpike Authority Project Disbursing Account.
  - (n) This reflects amounts provided from the State Highway Fund to the Texas Education Agency, in accordance with statutory requirements.
  - (o) This reflects amounts provided from the State Highway Fund to the Texas Transportation Institute, in accordance with statutory requirements.
  - (p) This primarily represents the transfer of gallonage taxes on motor fuels sold in Texas, collected by the Texas Comptroller of Public Accounts and transferred to the State Highway Fund. The distribution of these taxes, which are constitutionally dedicated revenues, is as follows:

Gasoline Tax - Generally, twenty cents per gallon on all gasoline sold for highway use. Sales for the exclusive

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use of the federal government or a public school district in Texas, are exempt.

The Texas Comptroller of Public Accounts retains 1 percent of the gross receipts for administration and enforcement, and after providing for refunds of non-highway use collections, distributes the remainder:

- |                          |  |
|--------------------------|--|
| a. Available School Fund | 25%  |
| b. State Highway Fund    | 75%, less \$7,300,000 deposited to the County and Road District Highway Fund |

Diesel Fuel Tax - Twenty cents per gallon. Federal government and Texas public school sales are exempt.

The Texas Comptroller of Public Accounts retains 1 percent of gross receipts for administration and enforcement, and after providing for refunds of non-highway use collections, distributes the remainder:

- |                          |     |
|--------------------------|-----|
| a. Available School Fund | 25% |
| b. State Highway Fund    | 75% |

Liquefied Gas Tax - Fifteen cents per gallon for gas used in motor vehicles on public highways. Sales for the exclusive use of the federal government, local county government, or a public school district in Texas, are exempt. Users of liquefied gas for propulsion of motor vehicles on public highways are required to prepay the tax each year by purchasing a liquefied gas tax permit decal. The tax is based on the weight of the vehicle and the miles driven. Certain transit companies pay a flat fee of \$444 for the liquefied gas tax permit decal.

The Texas Comptroller of Public Accounts retains 1 percent of gross receipts for administration and enforcement, and after providing for refunds of non-highway use collections, distributes the remainder:

- |                          |     |
|--------------------------|-----|
| a. Available School Fund | 25% |
| b. State Highway Fund    | 75% |

(q) This reflects amounts provided from the Texas Department of Insurance for Crash Information System expenditures in Fund 0036, in accordance with statutory requirements.

(r) This reflects amounts provided from the Texas Public Finance Authority to the Capital Projects Fund 7604, in accordance with statutory requirements.

**NOTE 2 – CAPITAL ASSETS**

A summary of changes in Capital Assets for the year ended August 31, 2009 is presented below:

	PRIMARY GOVERNMENT							Balance 8/31/2009
	Balance 9/1/2008	Adjustments	Reclassifications			Additions	Deletions	
			Completed CIP	Inc-Int' agy Transfers	Dec Int' agy Transfers			
<b>Governmental Activities:</b>								
<b>Non-depreciable Assets</b>								
Land and Land Improvements	\$ 7,445,829,294	\$ (105,535,908)	\$ -	\$ -	\$ -	\$ 400,364,840	\$ (307,970)	\$ 7,740,350,256
Infrastructure	44,177,104,087	(177,523,435)	2,513,617,418	-	-	16,000,000	-	46,529,198,070
Construction in Progress (Bldgs, Hwys, etc)	4,414,653,803	105,516,977	(3,532,658,706)	-	-	2,943,016,289	-	3,930,528,363
<b>Total non-depreciable assets:</b>	<b>56,037,587,184</b>	<b>(177,542,366)</b>	<b>(1,019,041,288)</b>	<b>-</b>	<b>-</b>	<b>3,359,381,129</b>	<b>(307,970)</b>	<b>58,200,076,689</b>
<b>Depreciable Assets:</b>								
Buildings and Building Improvements	269,482,031	-	34,833,165	-	-	-	(127,542)	304,187,654
Infrastructure	16,597,585,899	177,523,435	983,437,778	-	-	-	(46,998,441)	17,711,548,671
Furniture and Equipment	173,722,287	(783,552)	-	81,835	(88,284)	5,641,395	(3,980,581)	174,593,080
Vehicles, Boats, & Aircraft	646,822,552	(13,100)	-	-	(258,623)	14,920,819	(25,278,717)	636,192,931
Other Capital Assets	9,557,649	-	770,345	-	-	-	-	10,327,994
<b>Total depreciable assets at historical cost:</b>	<b>17,697,170,398</b>	<b>176,726,783</b>	<b>1,019,041,288</b>	<b>81,835.00</b>	<b>(346,907)</b>	<b>20,562,214</b>	<b>(76,385,281)</b>	<b>18,836,850,330</b>
<b>Less accumulated depreciation for:</b>								
Buildings and Building Improvements	(150,550,542)	-	-	-	-	(8,985,642)	121,164	(159,415,020)
Infrastructure	(9,423,883,100)	(7,108,026)	-	-	-	(547,109,808)	43,344,262	(9,934,756,672)
Furniture and Equipment	(112,564,140)	(779)	-	(20,959)	66,709	(11,768,289)	3,562,875	(120,724,583)
Vehicles, Boats, & Aircraft	(350,760,270)	-	-	-	223,509	(33,444,758)	21,257,935	(362,723,584)
Other Capital Assets	(2,782,698)	-	-	-	-	(467,578)	-	(3,250,276)
<b>Total accumulated depreciation:</b>	<b>(10,040,540,750)</b>	<b>(7,108,805)</b>	<b>-</b>	<b>(20,959)</b>	<b>290,218</b>	<b>(601,776,075)</b>	<b>68,286,236</b>	<b>(10,580,870,135)</b>
<b>Depreciable assets, net</b>	<b>7,656,629,648</b>	<b>169,617,978</b>	<b>1,019,041,288</b>	<b>60,876</b>	<b>(56,689)</b>	<b>(581,213,861)</b>	<b>(8,099,045)</b>	<b>8,255,980,195</b>
<b>Governmental activities capital assets, net:</b>	<b>\$ 63,694,216,832</b>	<b>\$ (7,924,388)</b>	<b>\$ -</b>	<b>\$ 60,876</b>	<b>\$ (56,689)</b>	<b>\$ 2,778,167,268</b>	<b>\$ (8,407,015)</b>	<b>\$ 66,456,056,884</b>

	PRIMARY GOVERNMENT							Balance 8/31/2009
	Balance 9/1/2008	Adjustments	Reclassifications			Additions	Deletions	
			Completed CIP	Inc-Int' agy Transfers	Dec Int' agy Transfers			
<b>Business-Type Activities:</b>								
<b>Non-depreciable Assets</b>								
Land and Land Improvements	\$ 629,188,048	\$ -	\$ -	\$ -	\$ -	\$ 9,240,332	\$ -	\$ 638,428,380
Infrastructure	1,605,593,550	-	21,197,283	-	-	-	-	1,626,790,833
Construction in Progress	-	-	(25,706,811)	-	-	25,706,811	-	-
<b>Total non-depreciable assets:</b>	<b>2,234,781,598</b>	<b>-</b>	<b>(4,509,528)</b>	<b>-</b>	<b>-</b>	<b>34,947,143</b>	<b>-</b>	<b>2,265,219,213</b>
<b>Depreciable Assets:</b>								
Buildings and Building Improvements	8,360,006	-	-	-	-	-	-	8,360,006
Infrastructure	411,923,869	-	4,509,528	-	-	-	-	416,433,397
<b>Total depreciable assets at historical cost:</b>	<b>420,283,875</b>	<b>-</b>	<b>4,509,528</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>424,793,403</b>
<b>Less accumulated depreciation for:</b>								
Buildings and Building Improvements	(907,334)	-	-	-	-	(361,001)	-	(1,268,335)
Infrastructure	(23,182,726)	-	-	-	-	(16,567,145)	-	(39,749,871)
<b>Total accumulated depreciation:</b>	<b>(24,090,060)</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(16,928,146)</b>	<b>-</b>	<b>(41,018,206)</b>
<b>Depreciable assets, net</b>	<b>396,193,815</b>	<b>-</b>	<b>4,509,528</b>	<b>-</b>	<b>-</b>	<b>(16,928,146)</b>	<b>-</b>	<b>383,775,197</b>
<b>Business-type activities capital assets, net:</b>	<b>\$ 2,630,975,413</b>	<b>\$ -</b>	<b>\$ 4,509,528</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 18,018,997</b>	<b>\$ -</b>	<b>\$ 2,648,994,410</b>

**NOTE 3 - DEPOSITS, INVESTMENTS, AND REPURCHASE AGREEMENTS**

TxDOT is authorized by statute to make investments following the “prudent person rule.” There were no significant violations of legal provisions during the period.

**Deposits of Cash in Bank**

As of August 31, 2009, the carrying amount of deposits was \$460,473,982 as presented below.

<b>Governmental and Business-Type Activities</b>	
Cash in Bank – Carrying Value	\$460,473,982
Total Cash in Bank per AFR	\$460,473,982

Governmental Funds Current Assets Cash in Bank	\$109,148,525
Proprietary Funds Current Assets Cash in Bank	25,488,890
Proprietary Funds Current Assets Money Market and Similar Funds	325,836,567
Cash in Bank per AFR	\$460,473,982

These amounts consist of all cash and cash equivalents in local banks. These amounts are included on the Combined Statement of Net Assets as part of the “Cash and Cash Equivalents” accounts.

As of August 31, 2009, the total bank balance was as follows.

Governmental and Business-Type Activities	\$460,473,982
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**Custodial Credit Risk – Deposits**

In the case of deposits, this is the risk that in the event of a bank failure, the government’s deposits may not be returned to it. All of the System’s deposits are held in the State Treasury, the Trustee bank, or a depository bank. Deposits of the State of Texas are normally managed by the State Comptroller of Public Accounts (the “Comptroller”) and are protected by \$100,000 of insurance by the Federal Deposit Insurance Corporation (FDIC). On October 3, 2008, the Emergency Economic Stabilization Act of 2008 temporarily raised the basic limit on federal deposit insurance coverage from \$100,000 to \$250,000 per depositor. The legislation provides that the basic deposit insurance limit will return to \$100,000 after December 31, 2009.

Collateral pledged must be equal to at least 105% of the principal amount deposited by the Department. The Comptroller has full responsibility for insuring adequate collateralization of all state deposits, including those held in local banks. On August 31, 2009, the State Treasury deposits were fully collateralized with securities held by an agent of the Comptroller, in the Department’s name, in accordance with the Comptroller’s requirements. The Wachovia bank deposits were collateralized at August 31, 2009.

**Investments**

As of August 31, 2009, the fair value of investments and maturities are as presented below:

Investment Type	Maturities (in Years)		Fair Value
	Less than 1	More than 5	Total
U.S. Government Agency Obligations	\$15,315,669		\$15,315,669
Repurchase Agreement		114,999,378	114,999,378
Total	\$15,315,669	\$114,999,378	\$130,315,047

**Custodial Credit Risk - Investments**

Custodial credit risk for investments is the risk that, in the event of the failure of the counterparty, the Commission will not be able to recover the value of its investments or collateral securities that are in the possession of an outside party. The Commission’s investment policy states that all securities purchased by the Commission shall be designated as assets of the Commission and shall be protected through the use of a third-party custody/safekeeping agent, which may be a Trustee. As of August 31, 2009, the Commission’s investments in U.S. Government Agency obligations were held in the Commission’s name. The repurchase agreement is collateralized with U.S. Government and Agency securities. Collateral for the repurchase agreement is held by the Bank of New York Mellon with the underlying securities being the property of the JPMorgan Trustee Bank, held in trust for the Commission.

**Credit Risk - Investments**

Credit Risk is the risk that an issuer or other counterparty to an investment will not fulfill its obligations. The Commission may not enter into long term investment agreements or other ongoing investment transactions with a final maturity or termination date of longer than six months with any financial institution that initially has a long term rating category of less than “A” and that doesn’t have at least one long-term rating of at least “AA” by a nationally recognized investment rating firm according to the Investment Policy. All investments made by the Commission have been through the list of Qualified Financial Institutions approved by the Commission. The Commission’s policy does not limit the amount of investment in obligations of the United States or its agencies. These securities are rated AAA by the S & P rating agency, therefore the risk of default is considered remote. Citigroup is rated A3, A, and A+ by Moody’s, Standard & Poors (“S & P”), and Fitch Ratings respectively. The Bank of New York Mellon is rated Aaa, AA, and AA by Moody’s, and S & P, and Fitch Ratings respectively.

As of August 31, 2009, TxDOT’s investments had the following ratings.

Investment Type	Fair Value	Moody’s Rating	S & P Rating	Fitch Rating
U.S. Government Agency Obligations	\$15,315,669	Aaa	AAA	NR
Repurchase Agreement	114,999,378	A3	A	A+
Total	\$130,315,047			

**Concentration of Credit Risk - Investments**

Concentration of credit risk is the risk of loss attributed to the magnitude of a government’s investment in a single issuer. The only investment that the System holds that exceeds 5% of the total investments is the repurchase agreement. This investment is held primarily for the debt service reserve fund, which has a long term duration and a specific purpose. The Commission addresses diversification in the Department’s Investment Policy. Assets held in particular funds shall be diversified to eliminate the risk of loss resulting from over concentration of assets in a specific maturity, a specific issuer or a specific class of securities. Diversification strategies shall be determined and revised periodically by the Investment Officer for all funds.

**Interest Rate Risk - Investments**

Interest rate risk is the risk that changes in interest rates will adversely affect the fair value of an investment. The Commission has addressed interest rate risk in its various accounts by matching as closely as possible anticipated cash flows with income and return of principal on investments. Interest rate risk was essentially eliminated in the Capitalized Interest account as investments have been made such that securities mature on debt service payment dates and will not need to be liquidated prior to maturity. For variable rate bonds, an estimated draw amount was used to account for the fluctuating nature of the interest payments at a rate higher than current market in order that securities will not need to be liquidated or sold prior to their stated maturities. In general, all securities held by the Commission are anticipated to be held to maturity, thereby avoiding interest rate risk due to an early redemption. Additionally, security maturities were staggered and in the event the sale of security was required to meet unexpectedly higher construction draws, the proximity of the security to its stated maturity date will minimize the impact of interest rate fluctuations. For investment maturities, see the table on page 36.

**Foreign Currency Risk – Investments**

The department’s investments are not exposed to foreign currency risk.

**Derivatives**

As of August 31, 2009, the department had not entered into any investment derivative transactions.

**NOTE 4 - SHORT TERM DEBT**

**Changes in Short-Term Liabilities**

During the year ended August 31, 2009, the department utilized a Short-Term Borrowing Program using Commercial Paper. The Commercial Paper proceeds are being used to cover funding shortfalls for capital expenditures.

<b>Governmental Activities</b>	<b>Balance 09-01-08</b>	<b>Additions</b>	<b>Deletions</b>	<b>Balance 08-31-09</b>
Commercial Paper	\$190,750,000	\$445,000,000	\$335,750,000	\$300,000,000
<b>Total Governmental Activities</b>	<b>\$190,750,000</b>	<b>\$445,000,000</b>	<b>\$335,750,000</b>	<b>\$300,000,000</b>

**NOTE 5 - SUMMARY OF LONG TERM LIABILITIES**

**Changes in Long-Term Liabilities**

As detailed below, the following changes occurred in liabilities during the year ended August 31, 2009:

Governmental Activities	Balance 09-01-08	Additions	Reductions	Balance 08-31-09	Principal Due Within One Year
Compensable Leave	\$71,937,183	\$101,475,616	\$99,251,228	\$74,161,571	\$57,324,561
General Obligation Bonds	4,955,850,000	1,208,495,000	32,290,000	6,132,055,000	34,730,000
Premium – General Obligation Bonds	165,821,178	0	8,830,891	156,990,287	8,762,477
Revenue Bonds	2,876,600,366	* 9,309,634	94,155,000	2,791,755,000	104,100,000
Premium – Revenue Bonds	125,270,270	* (9,309,634)	6,362,682	109,597,954	6,362,681
Pass-Through Toll Payable	4,100,000	16,000,000	205,000	19,895,000	205,000
Pollution Remediation Obligations	** 15,585,000	830,000	7,333,313	9,081,687	755,000
<b>Total Governmental Activities</b>	<b>\$8,215,163,997</b>	<b>\$1,326,800,616</b>	<b>\$248,428,114</b>	<b>\$9,293,536,499</b>	<b>\$212,239,719</b>

Business-Type Activities	Balance 09-01-08	Accreted Interest	Additions	Reductions	Balance 08-31-09	Due Within One Year
TIFIA Note Payable	\$900,000,000	^ \$72,092,191			\$972,092,191	\$ 0
Revenue Bonds Payable	1,477,225,372	35,805,112	149,275,000	150,000,000	1,512,305,484	0
Unamortized Revenue Bond Premium	9,332,177			314,767	9,017,410	314,767
Unamortized Revenue Bond Discount	(17,822,586)		601,142		(17,221,444)	(601,142)
Unamortized Loss on Refunding			60,289	4,541,255	(4,480,966)	(134,787)
<b>Total Business-Type Activities</b>	<b>\$2,368,734,963</b>	<b>\$107,897,303</b>	<b>\$149,936,431</b>	<b>\$154,856,022</b>	<b>\$2,471,712,675</b>	<b>\$(422,162)</b>

\*Revenue Bonds Payable and Premium on Revenue Bonds beginning balances were misstated by \$9,309,634 and (\$9,309,634), respectively at the end of FY 2008 and are being corrected this fiscal year.

\*\*Restatement due to the implementation of GASB Statement No. 49, *Accounting and Financial Reporting for Pollution Remediation Obligations*.

^ Accreted interest on the TIFIA Note Payable consists of FY 2007 \$1,730,315 and FY 2008 \$17,810,047 not previously reported, and FY 2009 \$52,551,829.

**Notes and Loans Payable**

The department issued \$900,000,000 of Bond Anticipation Notes (BANS) on August 29, 2002 for the purpose of paying a portion of the cost of planning, designing, engineering, developing and constructing the initial phase of the Central Texas Turnpike System located in the greater City of Austin, Texas metropolitan area in Travis and Williamson Counties, Texas. The proceeds of the Series 2002 Second Tier BANS were used, together with certain other funds to (i) finance a portion of the costs of planning, designing, engineering, developing and constructing the 2002 CTPP Project (ii) pay the capitalized interest with respect to the Series 2002 Second Tier BANS to their respective maturities and (iii) pay certain issuance costs of the Series 2002 Second Tier BANS. The Second Tier BANS are also payable from the proceeds of any bonds, notes or obligations issued to retire the Series 2002 Second Tier BANS. Interest began accruing on the Series 2002 Second Tier BANS on August 15, 2002, is payable on December 1 and June 1 of each year, from December 1, 2002, until maturity, and is calculated on the basis of a 360-day year of twelve 30-day months. The BANS were retired in June 2007 and June 2008. See Note 6 for the related Bonds Payable.

The United States Department of Transportation (“USDOT”) has agreed to lend to the Commission up to \$916,760,000 to pay or reimburse a portion of the costs of the Central Texas Turnpike System’s 2002 Project under the Secured Loan Agreement. The Secured Loan Agreement was entered into pursuant to the provisions of the Transportation Infrastructure Finance and Innovation Act of 1998, 23 United States Code, Section 181, et. Seg. As of August 31, 2008, the Department has drawn \$900,000,000 under the Secured Loan Agreement evidenced by the 2002 TIFIA Bond. The proceeds from the loan were used to retire the maturing BANS. Funds under the Secured Loan Agreement are transferred from the United States Department of Treasury upon presentation by the Commission of a request for disbursement in accordance with the provisions of the Secured Loan Agreement.

The obligations of the Commission under the Secured Loan Agreement are evidenced by the 2002 TIFIA Bond, a Subordinate Lien Obligation under the Indenture, payable from a subordinate lien on the Trust Estate described above; provided, however, that the 2002 TIFIA Bond is not secured by any funds or accounts established under the Indenture established for the benefit of the First Tier Obligations, Second Tier Obligations, or other specific Subordinate Lien Obligations issued pursuant to a supplemental indenture under the Indenture. Upon the occurrence of a Bankruptcy Related Event under the Secured Loan Agreement, the 2002 TIFIA Bond becomes a First Tier Obligation.

The debt service requirements for Notes payable in the Business-Type Activities are as follows:

	TIFIA *			TOTAL
	Principal	Interest	Accreted Interest	
2010	\$ 0	\$ 18,474,911	\$ 0	\$ 18,474,911
2011	0	30,081,956	0	30,081,956
2012	0	31,690,132	0	31,690,132
2013	0	33,697,991	0	33,697,991
2014	0	35,022,322	0	35,022,322
2015-2019	0	223,337,086	0	223,337,086
2020-2024	0	297,002,998	0	297,002,998
2025-2029	65,294,511	336,598,163	8,700,245	410,592,919
2030-2034	168,121,784	301,477,216	38,747,907	508,346,907

	TIFIA *			TOTAL
	Principal	Interest	Accreted Interest	
2035-2039	\$ 349,147,098	\$ 224,295,438	\$ 93,444,662	\$ 666,887,198
2040-2042	317,436,607	60,995,454	198,780,710	577,212,771
<b>Total</b>	<b>\$ 900,000,000</b>	<b>\$ 1,592,673,667</b>	<b>\$ 339,673,524</b>	<b>\$ 2,832,347,191</b>

Fixed interest rates vary from 3.125% to 5.510% depending on maturities. The first interest payment on the TIFIA Loan is not payable until February 15, 2010. The loan will be paid from revenues from the Central Texas Turnpike System as they are sufficient to pay (a) all interest which will become due and payable on the TIFIA loan on each such date and (b) the principal, if any, of the secured loan which will become due and payable on each such date, therefore this schedule is subject to change each year as actual revenues are received. Per the agreement, principal and interest can be deferred (negatively amortized) due to availability of revenues, therefore the principal amount may increase over time.

### Claims and Judgments

The department's involvement in claims and judgments is discussed in detail in Note 15. Management's opinion is that the probable outcome of claims and judgments against the department will not materially affect the financial position of the department; therefore, no liability amount has been accrued.

### Employees' Compensable Leave

An employee who terminates his or her employment with the department is entitled to payment for accumulated annual leave up to the maximum allowed. Expenditures for accumulated annual leave balances are recognized in the period paid or taken in governmental fund types. Full-time employees earn annual leave from 8 to 21 hours per month, depending on the respective employee's years of state employment. The maximum number of hours that may be carried forward from the 2009 fiscal year to the next was up to 532 for those with 35 or more years of state employment. For these fund types, the liability for unpaid benefits is recorded in the Statement of Net Assets. No employees are paid from proprietary fund types. No liability is recorded for non-vesting accumulating rights to receive sick pay benefits.

### Pass-Through Toll Payable

Last year, the Texas Department of Transportation took over ownership of a pass-through toll bridge project in Williamson County, and also, this bridge was opened to the public. Therefore, the Texas Department of Transportation capitalized a bridge asset and recognized a long term liability of \$4.1 million, which will be paid to Williamson County over a maximum of 20 years. Pass-through toll payments began to Williamson County in fiscal year 2009.

On March 1, 2009, the Texas Department of Transportation accepted for maintenance a segment of the Montgomery County pass-through toll project. Based on the project details and the miles of road opened, the Texas Department of Transportation will capitalize a roadway asset and will recognize a long term liability of \$16 million related to this segment.

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The pass-through toll reimbursement payments to Montgomery County will not begin until the adjacent segment of the pass-through toll project is opened. Therefore, pass-through toll payments are not expected to begin to Montgomery County during fiscal year 2010 and the entire \$16 million liability is shown as long term as of August 31, 2009.

### **Pollution Remediation Obligations**

The Texas Department of Transportation is responsible for the cleanup and remediation of several polluted sites. Regulatory requirements established by federal and state law obligate TxDOT to perform these pollution remediation activities. Historical cost averages were used to calculate the estimated pollution remediation obligation liabilities. The pollution remediation activity is summarized below:

- TxDOT has recognized a \$6,500,687 pollution remediation obligation related to state municipal solid waste landfill requirements.
- TxDOT has recognized a \$1,521,000 pollution remediation obligation related to State Leaking Petroleum Storage Tank (LPST) cleanup requirements.
- TxDOT has recognized a \$500,000 pollution remediation obligation related to the Federal Safe Drinking Water Act requirements.
- TxDOT has recognized a \$250,000 pollution remediation obligation to manage contaminated media associated with a federal Superfund site.
- TxDOT has recognized a \$200,000 pollution remediation obligation related to state cleanup requirements for releases from non-LPST sources.
- TxDOT has recognized a \$60,000 pollution remediation obligation to manage contaminated media associated with a state Superfund site.
- TxDOT has recognized a \$50,000 pollution remediation obligation to comply with EPA Asbestos National Emission Standards for Hazardous Air Pollutants.

Federal reimbursements are expected to offset a portion of these estimated costs. When realizable, the federal reimbursements are recognized as federal revenue. The potential for changes due to price increases or reductions, technology or applicable laws or regulations was incorporated into these estimates.

### **NOTE 6 - BONDED INDEBTEDNESS**

#### **Bonds Payable:**

Detailed supplemental bond information is disclosed in Schedule 2-A, Miscellaneous Bond Information, Schedule 2-B, Changes in Bond Indebtedness, Schedule 2C, Debt Service Requirements-Enterprise Fund, Schedule 2D, Analysis of Funds Available for Debt Service, and Schedule 2F, Schedule of Early Extinguishment and Refunding.

#### **Governmental Activities**

##### **A. General Obligation Bonds – Texas Mobility Fund**

Transportation Code, Chapter 201, Subchapter M. Obligations for Certain Highway and Mobility Projects authorized

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the Commission to issue Texas Mobility Fund Bonds. In May 2005, the Texas Bond Review Board approved \$4 billion of bonds through one or more issuances from the Texas Mobility Fund. In September 2007, the issuance amount was increased to \$6.5 billion through an amendment to the Master Resolution.

Information related to the Texas Mobility Fund General Obligation bonds is summarized below:

1. Series 2005-A Fixed Rate Bonds

- Issued 06-08-05
- \$900,000,000
- Rated AA+, Aa1, and AA+, by Fitch Ratings, Moody's, and S & P, respectively

2. Series 2005-B Variable Rate Bonds

- Issued 06-08-05
- \$100,000,000
- Rated AA+/F1+, Aa1/VMIG 1, and AA+/A-1+, by Fitch Ratings, Moody's, and S & P, respectively

3. Series 2006 Fixed Rate Bonds

- Issued 06-08-06
- \$750,000,000
- Rated AA+, Aa1, and AA+, by Fitch Ratings, Moody's, and S & P, respectively

4. Series 2006-A Fixed Rate Bonds

- Issued 10-31-06
- \$1,040,275,000
- Rated AA+, Aa1, AA+, by Fitch Ratings, Moody's, and S & P, respectively

5. Series 2006-B Variable Rate Bonds

- Issued 12-13-06
- \$150,000,000
- Rated AA+/F1+ and Aa1/VMIG 1 by Fitch Ratings and Moody's, respectively

6. Series 2007 Fixed Rate Bonds

- Issued 06-21-07
- \$1,006,330,000
- Rated AA+, Aa1, and AA+, by Fitch Ratings, Moody's, and S & P, respectively

7. Series 2008 Fixed Rate Bonds

- Issued 02-28-08
- \$1,100,000,000
- Rated AA+, Aa1, AA+, by Fitch Ratings, Moody's, and S & P, respectively

8. Series 2009-A Fixed Rate Bonds

- Issued 08-26-2009
- \$1,208,495,000
- Rated AA+, Aa1, AA+, by Fitch Ratings, Moody's, and S & P, respectively

**Purpose of the bonds:** To pay, or reimburse the State Highway Fund for the payment of part of the costs of (i) constructing, reconstructing, acquiring, and expanding State highways and providing participation by the State in the payment of part of the costs of constructing and providing certain publicly owned toll roads and other public

transportation projects and (ii) issuing the Bonds.

**Source of revenue for debt service:** Pursuant to the Enabling Act, the Commission must secure payment of Parity Debt with all or part of the revenues dedicated to and on deposit in the Mobility Fund, and may pledge the full faith and credit of the State to payments due on Parity Debt if revenues in the Mobility Fund are insufficient to make payments due on such obligations. With respect to Parity Debt, the Commission has pledged to the Owners as security for the payment of the Bonds and the previously issued Outstanding Parity Debt, a first lien in the Security, which consists of: (i) all Pledged Revenues; (ii) all Transportation Assistance Bonds in the Portfolio Account and all amounts in the General Account and the Interest and Sinking Account; (iii) any additional account or subaccount within the Mobility Fund that is subsequently established and designated as being included within the Security; (iv) all of the proceeds of the foregoing, including, without limitation, investments thereof; (v) any applicable Credit Agreement to the extent set forth in such Credit Agreement; and (vi) any applicable guarantee of the State. Funds deposited to the Mobility Fund through August 31, 2005 include revenues from Court Fines and Driver License Point Surcharge Fees. On September 1, 2005, the initial revenue sources of the Mobility Fund were redirected to the State of Texas General Revenue Fund. New sources of revenue for the Mobility Fund were phased into the Mobility Fund. In fiscal year 2006 the sources of revenue were the United We Stand License Plate Fees, Investment Income, and Motor Vehicle Inspection Fees. Driver Record Information Fees were added in fiscal year 2007, Driver License Fees in fiscal year 2008, and Certificate of Title Fees in fiscal year 2009.

With respect to the Series 2005-B Bonds and the Series 2006-B Bonds liquidity facilities have been executed with DEPFA Bank PLC (for Series 2005-B), and State Street Bank and Trust along with California Public Employees' Retirement System (for Series 2006-B), to provide liquidity in the event such bonds are tendered for purchase and such bonds are not remarketed by the remarketing agent. The repayment obligations under the liquidity facilities are parity debt and payable from the same source of revenues as the outstanding parity obligations.

## **B. Revenue Bonds – State Highway Fund**

Transportation Code, Chapter 222, Subchapter A. authorized the Commission to issue State Highway Fund Revenue Bonds. The aggregate principal amount of the bonds and other public securities that are issued may not exceed \$6 billion. The Commission may only issue bonds or other public securities in an aggregate principal amount of not more than \$1.5 billion each year.

Information related to the State Highway Fund Revenue Bonds is summarized below:

1. 1<sup>st</sup> Tier Revenue Bonds, Series 2006 Fixed Rate
  - To fund State highway improvement projects
  - Issued 05-03-06
  - \$600,000,000
  - Rated Aa1 and AAA by Moody's and S & P, respectively
2. 1<sup>st</sup> Tier Revenue Bonds, Series 2006-A Fixed Rate
  - To fund State highway improvement projects
  - Issued 11-21-06
  - \$852,550,000

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- Rated Aa1 and AAA by Moody's and S & P, respectively
3. 1<sup>st</sup> Tier Revenue Bonds, Series 2006-B Variable Rate
    - To fund State highway improvement projects
    - Issued 11-08-06
    - \$100,000,000
    - Rated Aa1/VMIG1 and AAA/A-1+ by Moody's and S & P, respectively
  4. 1<sup>st</sup> Tier Revenue Bonds, Series 2007 Fixed Rate
    - To fund State highway improvement projects
    - Issued 10-25-07
    - \$1,241,845,000
    - Rated and Aa1 and AAA by Moody's and S & P, respectively
  5. 1<sup>st</sup> Tier Revenue Bonds, Series 2008 Fixed Rate
    - To fund State highway improvement projects
    - Issued 8-19-08
    - \$162,995,000
    - Rated Aa1 and AAA by Moody's and S & P, respectively

**Purpose of the bonds:** (i) financing State highway improvement projects that are eligible for funding with revenues dedicated under Article VIII, Section 7-a of the Texas Constitution; and (ii) to pay the costs of issuing the bonds.

**Source of revenue for debt service:** The First Tier Obligations are special, limited obligations of the Commission and are payable from pledged revenues deposited to the credit of the State Highway Fund. Pledged revenues means all State Highway Fund Revenues deposited to the credit of the Fund, together with any additional monies as may in the future be authorized by law to be pledged as security for Senior Obligations. State Highway Revenues means all revenues deposited in, or appropriated or dedicated by law for deposit into, the State treasury to the credit of the Fund, including (i) Dedicated Registration Fees, (ii) Dedicated Taxes, (iii) Dedicated Federal Revenues, (iv) amount collected or received pursuant to other State Highway Fund Revenue Law, and (v) any interest or earnings from the investment of Dedicated Registration Fees, Dedicated Taxes and Dedicated Federal Revenues; provided that State Highway Fund Revenues do not include moneys and investments deposited in, or appropriated or dedicated by law for deposit into the following funds: (i) the State Infrastructure Bank Account and any Proceeds Fund, Interest and Sinking Fund, Reserve Fund or Rebate Fund and (ii) any special fund, subfund, account or subaccount in the Fund created for the purpose of receiving, holding and administering Restricted Revenues.

With respect to the Series 2006-B Bonds a liquidity facility has been executed with Banco Bilbao Vizcaya Argentaria, S.A., acting through its New York Branch to provide liquidity in the event such bonds are tendered for purchase and such bonds are not remarketed by the remarketing agent. The repayment obligation under the liquidity facility is parity debt and payable from the same source of revenues as the outstanding parity obligations.

## **Business-Type Activities**

### **A. Revenue Bonds – Central Texas Turnpike System**

The Commission issued \$1,149,993,782 of First Tier Revenue Bonds, Series 2002-A, \$150,000,000 of First Tier

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Revenue Bonds, Series 2002-B and \$900,000,000 of BANS on August 29, 2002 for the purpose of paying a portion of the costs of planning, designing, engineering, developing and constructing the initial phase of the Central Texas Turnpike System (CTTP) located in the greater City of Austin, Texas metropolitan area in Travis and Williamson Counties, Texas. The proceeds of the Series 2002-A, 2002-B Bonds and BANS were used, together with certain other funds to (i) finance a portion of the costs of planning, designing, engineering, developing and constructing the 2002 CTTP Project (ii) pay a portion of capitalized interest during construction and for the first 11 months following the anticipated completion date of the 2002 CTTP Project, (iii) fund a portion of the First Tier Debt Service Fund Requirement, and (iv) pay certain issuance costs of the Series 2002-A, 2002-B Bonds and BANS. For further information on the BANS, please refer to Note 5.

Information related to the Central Texas Turnpike System Revenue Bonds is summarized below:

- I. 1<sup>st</sup> Tier Revenue Bonds, Series 2002A, Fixed Rate (Non-callable Capital Appreciation Bonds, Callable Capital Appreciation Bonds, and Current Interest Bonds)
  - To study, design, construct, operate, expand, enlarge, and extend the Central Texas Turnpike Project
  - Issued 08-29-02
  - \$1,149,993,782; all authorized bonds have been issued
  - Rated BBB+, Baa1, and BBB+ by Fitch Ratings, Moody's and S & P, respectively
2. 1<sup>st</sup> Tier Revenue Refunding Put Bonds, Series 2009, Fixed Rate
  - To refund the Series 2002-B variable rate bonds and to pay the costs of issuance for the bonds
  - Issued 03-05-09
  - \$149,275,000
  - Rated BBB+, Baa1, BBB+ by Fitch Ratings, Moody's and S & P, respectively

**Source of revenue for debt service** – The First Tier Obligations are special, limited obligations of the Commission and are payable from, and secured solely by a first lien on and pledge of the Trust Estate, consisting of (i) all Project Revenues, and to the extent set forth in a supplemental indenture, any Additional Obligation Security, (ii) all Project moneys, including investment earnings, deposited into the Revenue Sub-Fund, the Construction Sub-Fund (except for any amounts held in a sub account containing moneys derived from the State Highway Fund or any moneys received by the Commission that are restricted to another use, such as right-of-way contributions that may be used only for that purpose), the First Tier Debt Service Sub-Fund, the First Tier Debt Service Reserve Sub-Fund (provided, however, that the principal portion of any Series 2002-B Bonds while they were Liquidity Provider Bonds was not secured by, or entitled to any benefit of, such reserve sub-fund), the Rate Stabilization Sub-Fund and the General Reserve Sub-Fund, (iii) any Project insurance proceeds and other moneys required to be deposited in the pledged funds listed in (ii) above and (iv) all payments received by the Commission pursuant to Approved Swap Agreements with respect to First Tier Obligations.

None of the State of Texas, the Commission, the department, or any other agency or political subdivision of the State of Texas is obligated to pay the principal of, premium, if any, or interest on the CTTS Obligations except from the trust estate. Neither the faith and credit nor the taxing power of the State of Texas or any political subdivision thereof is pledged to the payment of the principal of, premium, if any, or interest on the CTTS Obligations. Neither the Commission nor the department has any taxing power. The bond indenture does not create a mortgage on the

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system.

In addition to the First Tier Revenue Bonds, Series 2002A, the First Tier Revenue Bonds, Series 2002B, the First Tier Revenue Refunding Put Bonds, Series 2009, and the BANS, the United States Department of Transportation (“USDOT”) has agreed to lend to the Commission up to \$916,760,000 to pay or reimburse a portion of the costs of the 2002 Project under the Secured Loan Agreement. The Secured Loan Agreement was entered into pursuant to the provisions of the Transportation Infrastructure Finance and Innovation Act of 1998, 23 United States Code, Section 181, et. Seg. As of August 31, 2009, the Department has drawn \$900,000,000 under the Secured Loan Agreement evidenced by the 2002 TIFIA Bond. The proceeds of the loan were used to retire the maturing BANS. Funds under the Secured Loan Agreement are transferred from the United States Department of Treasury upon presentation by the Commission of a request for disbursement in accordance with the provisions of the Secured Loan Agreement. On April 30, 2007, the Commission requested a disbursement under the Secured Loan Agreement in the amount of \$124,930,000 and funds were transferred on May 14, 2007. On March 17, 2008, the Commission requested a disbursement under the Secured Loan Agreement in the amount of \$775,070,000 and funds were transferred on May 15, 2008. For further information on the TIFIA bond, please refer to Note 5.

The obligations of the Commission under the Secured Loan Agreement are evidenced by the 2002 TIFIA Bond, a Subordinate Lien Obligation under the Indenture, payable from a subordinate lien on the Trust Estate described above; provided, however, that the 2002 TIFIA Bond is not secured by any funds or accounts established under the Indenture established for the benefit of the First Tier Obligations, Second Tier Obligations, or other specific Subordinate Lien Obligations issued pursuant to a supplemental indenture under the Indenture. Upon the occurrence of a Bankruptcy Related Event under the Secured Loan Agreement, the 2002 TIFIA Bond becomes a First Tier Obligation.

The Series 2002-B bonds were subject to redemption at the option of the Commission on any interest payment date. Under the terms of the Standby Purchase Agreement, a special mandatory redemption of \$2,525,000 of Series 2002-B bonds occurred on February 19, 2009, using funds from the Revenue Fund. The remaining \$147,475,000 of the Series 2002-B bonds were refunded with proceeds from the issuance of the CTTS First Tier Revenue Refunding Put Bonds, Series 2009, issued March 5, 2009.

## DERIVATIVES

### *Pay-Variable, Receive-Variable Interest Rate Swaps*

#### **Objective of the Swaps**

The Commission is currently a party to three pay-variable, receive-variable Constant Maturity Swaps (CMS basis swaps) associated with the Commission’s State of Texas General Obligation Mobility Fund Series 2006-A fixed-rate bonds. The CMS basis swaps exchange the Securities Industry and Financial Markets Association (SIFMA) Municipal Swap Index for 69.42% of the 10 year London Interbank Offered Rate (LIBOR) Swap Index. The purpose of the CMS basis swaps is to achieve reduced overall borrowing costs through the assumption of yield curve risk (the difference between short-term and long-term rates) and tax risk (the spread between the SIFMA tax-exempt rate and the LIBOR taxable rate).

**Significant Terms**

The \$400 million forward starting CMS basis swap was competitively bid on October 5, 2006 and agreements were executed with the following counterparties on October 6, 2006: JPMorgan Chase Bank, N.A., Goldman Sachs Mitsui Marine Derivative Products, L.P., and Morgan Stanley Capital Services Inc. The notional amount of the JPMorgan Chase CMS basis swap is \$200 million and the notional amounts of the Goldman Sachs and Morgan Stanley CMS basis swaps are each \$100 million. As of August 31, 2009 there was \$1,070,581,392 (which includes \$30,876,392 of unamortized premium) of Series 2006-A Bonds outstanding and the notional amount of the CMS basis swaps was \$400 million. Effective September 1, 2007, the Commission pays to each swap counterparty an amount equal to the SIFMA Municipal Swap Index on the notional amount of the swap agreements. In return, each swap counterparty will pay the Commission an amount equal to 69.42 percent of the USD-ISDA-Swap Rate assuming a 10-year Designated Maturity (which is a reported market rate at which 10-year interest rate swaps for a one month U.S. dollar LIBOR rate are entered into from time to time) on the notional amounts of each swap agreement. Regularly scheduled amounts owed by the Commission and the swap counterparties are due under the basis swap agreements on a net basis on the first business day of each month following the effective date of the basis swap agreements, which commenced October 2007 and ends on September 1, 2027. Following certain events, such as a credit rating downgrade of a counterparty, collateral posts may be required according to the credit support annex. In addition, the Commission has the option to terminate any swap transaction, in whole or in part, at any time. In the event that the Commission elects to terminate one or more swap transactions, amounts due to and from the counterparty/counterparties will be calculated by an external calculation agent.

**TERMS OF THE \$400 MILLION CMS BASIS SWAP**

<i>Counterparty</i>	<i>Notional Amount</i>	<i>Variable Rate Paid</i>	<i>Variable Rate Received</i>	<i>Fair Value</i>	
				<i>as of 8/31/09</i>	<i>Credit Ratings F/M/S&amp;P</i>
JPMorgan Chase	\$200 million	SIFMA	69.42% of 10-yr LIBOR	\$3,375,877	AA-/Aa3/AA-
Goldman Sachs	\$100 million	SIFMA	69.42% of 10-yr LIBOR	1,687,938	NR/Aa1/AAA
Morgan Stanley	\$100 million	SIFMA	69.42% of 10-yr LIBOR	1,687,938	A/A2/A+
	<u>\$400 million</u>			<u>\$6,751,753</u>	

**Fair Value**

As of August 31, 2009, the fair market values of the CMS basis swaps with JPMorgan Chase, Goldman Sachs, and Morgan Stanley were \$3,375,877, \$1,687,938, and \$1,687,938, respectively for a total market value of \$6,751,753. The valuations are intended to serve as theoretical estimates of the market value of the swaps as of the date indicated.

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Due to turbulence in the financial markets and the resulting volatility in short term interest rates, the mark-to-market value of the swaps has moved fairly dramatically in a short period of time. The same has been true for the exchange of payments on the swaps; however the duration of the rate volatility was short and short term rates have stabilized to more what historic experience has been. Additionally, a credit rating downgrade was experienced by one of the swap counterparties, which rendered that firm ineligible to participate in future derivative transactions with the Commission until their ratings are upgraded.

### Risks Involved

- a. Credit Risk: Credit risk is the risk that a counterparty will not fulfill its obligations according to the swap agreement. The Commission mitigates credit risk associated with swap transactions by only entering into transactions with highly-rated counterparties. Upon entering a derivative transaction, the Commission requires that counterparties have a minimum credit rating of AA-/Aa3 by at least one of the three nationally recognized rating agencies and not on rating/credit watch where a rating downgrade below AA-/Aa3 may be imminent. Additionally, the Commission diversifies exposure to counterparty credit risk through multiple awards. Although the original notional award amount for the CMS basis swap was \$400 million, the actual award was split amongst three counterparties. CMS basis swap agreements contain provisions for collateral posting by counterparties in the event of a credit rating downgrade. Acceptable forms of collateral include cash in the form of U.S. Dollars, negotiable debt obligations issued by the U.S. Treasury Department, and agency securities. Agency securities include negotiable debt obligations which are fully guaranteed as to both principal and interest by the Federal National Mortgage Association, the Government National Mortgage Association or the Federal Home Loan Mortgage Corporation, but excluding 1) interest only and principal only securities, and 2) Collateralized Mortgage Obligations, Real Estate Mortgage Investment Conduits and similar derivative securities. Collateral will be held by the Commission and/or its designated custodian.
- b. Interest Rate Risk: Yield curve risk, a form of interest rate risk, exists when short-term and long-term interest rates change causing a change in the shape of the yield curve. Yield curve risk has been assumed in the swap transactions, with the anticipated benefit dependent upon the yield curve's return to a slope more closely related to historical norms. Long-term exposure to yield curve risk is mitigated through the Commission's unilateral ability to terminate the swaps at any time should the yield curve not return to normal as projected.
- c. Basis Risk: Basis risk is the risk that occurs when derivative transactions incorporate variable interest rates based on different indexes, such as taxable versus tax-exempt indexes. Tax risk, a form of basis risk, is the risk that tax law changes would cause the SIFMA tax-exempt index to rise higher than the established percentage of the LIBOR taxable index. This change could cause the Commission's net cash outflows to be greater than the net cash inflows, thus reducing the cumulative interest rate savings intended by the swap transaction. To mitigate tax risk, the Commission executed swap agreements where the percentage of LIBOR closely matches historical trading relationships creating a net inflow of payments to the Commission, thus reducing interest cost. The Commission also mitigated tax risk by limiting the portion of the total portfolio that can be exposed to tax risk at a given time.

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- d. Termination Risk: Termination risk exists if
- i. The Commission opts to terminate the swap prior to maturity;
  - ii. The credit rating assigned to the long-term, unenhanced senior lien Texas Mobility Fund Revenue Financing Program Obligations of the Commission is withdrawn, suspended or falls below Baa2/BBB or the Commission fails to have any rated long-term, unenhanced senior lien Texas Mobility Fund Revenue Financing Program Obligations and the Commission is unable or not required to post collateral;
  - iii. The credit rating assigned to the long-term, unsecured, unenhanced, unsubordinated debt of a counterparty is withdrawn, suspended or falls below Baa2/BBB or a counterparty fails to have any rated long-term, unsecured, unenhanced, unsubordinated debt and the counterparty is unable to post collateral; or
  - iv. If the Commission or counterparty fails to perform under the terms of the respective swap agreements.

The Commission mitigates termination risk by maintaining a strong financial standing for its financing programs thus making involuntary termination unlikely. The Commission targets maintenance of sufficient reserves to cover all or part of a termination payment due to a counterparty if the swap is terminated prior to maturity and the swap has a negative fair value. Risk of involuntary termination due to counterparty downgrade is mitigated by a collateral posting requirement, and the use of a diverse group of credit worthy counterparties. Risk of involuntary termination due to a downgrade of the State of Texas below Baa2/BBB is highly unlikely given the General Obligation pledge and Aa1/AA+/AA+ ratings supporting the obligations of the Mobility Fund. In addition, the Commission also has the sole option to terminate and cancel any swap transaction, at any time, in whole or in part.

- e. Rollover Risk: Rollover risk is the risk that the duration of the swap transaction does not match the final maturity of the underlying debt issue. This presents risk because once the swap terminates, the Commission will no longer benefit from the anticipated reduced interest cost provided by the swap. The CMS basis swaps present rollover risk because the swaps will terminate on September 1, 2027 and the final maturity of the associated debt series is April 1, 2035. The Commission accepted rollover risk because extending the term of the swap agreements to match the maturity of the bonds would have continued counterparty credit risk for only marginal projected benefit.
- f. Market-access Risk: Market-access risk is the risk that an entity will not be able to enter credit markets or that credit will become more costly. The CMS basis swap does not present market-access risk because the transaction does not require access to the credit market.

#### Associated Debt

The CMS basis swaps are associated with the Commission's State of Texas General Obligation Mobility Fund Series 2006-A fixed-rate bonds. The debt service schedule for the bonds is shown in the table below. The effective date for the exchange of payments commencement on the CMS basis swaps was September 1, 2007. Projected cash flows according to assumptions are listed in the table on the following page.

**Debt Service Schedule**

State of Texas General Obligation Mobility Fund Series 2006-A Fixed-Rate Bonds			Constant Maturity Swaps	NET DEBT SERVICE
FY	PRINCIPAL	INTEREST	PAYMENTS*	
2010	1,325,000	49,779,500	(5,116,000)	45,988,500
2011	2,275,000	49,726,500	(5,116,000)	46,885,500
2012	3,215,000	49,635,500	(5,116,000)	47,734,500
2013	4,185,000	49,506,900	(5,116,000)	48,575,900
2014	5,115,000	49,339,500	(5,116,000)	49,338,500
2015-2019	50,690,000	242,358,700	(25,580,000)	267,468,700
2020-2024	147,310,000	221,265,500	(25,580,000)	342,995,500
2025-2029	282,075,000	172,724,375	(15,774,333)	439,025,042
2030-2034	457,315,000	88,933,875		546,248,875
2035-2039	86,200,000	3,879,000		90,079,000
	<b>\$1,039,705,000</b>	<b>\$977,149,350</b>	<b>\$(92,514,333)</b>	<b>\$1,924,340,017</b>

\*Swap payments projected using the historical average annual spread differential of 1.279%, between SIFMA and 69.42% of 10-Year USD-ISDA-Swap Rate (10 yr LIBOR) from 1985 to August 31, 2009.

**NOTE 7 - CAPITAL LEASES**

In fiscal year 2004, TxDOT assumed the operational responsibilities of the State Aircraft Pooling Board. In assuming this responsibility, TxDOT assumed capital leases under the Master Lease Purchase Program (MLPP). The liabilities associated with these leases are reported in the financial statements of the Texas Public Finance Authority. However, the capital assets associated with these leases are reported in these statements.

**NOTE 8 - OPERATING LEASE OBLIGATIONS**

To minimize long-term costs, and to ensure future availability of essential services, the department, in routine transactions, enters into leases which extend beyond the end of the fiscal year. The portion of these obligations extended beyond the current year is not a recognized liability, since the benefits have not been received as of the end of the fiscal year.

However, these leases will be claims against future appropriations, and consist of the agreements below for the future periods presented.

FISCAL YEAR	EQUIPMENT	FACILITIES	TOTAL
2010	\$3,401,729	\$ 3,960,961	\$ 7,362,690
2011	1,342,148	3,713,667	5,055,815
2012	752,748	2,817,988	3,570,736
2013	202,734	1,237,438	1,440,172
2014	43,721	307,197	350,918
2015-2019	3,400	0	3,400
2020-2024	0	0	0
<b>TOTAL</b>	<b>\$5,746,480</b>	<b>\$12,037,251</b>	<b>\$17,783,731</b>

The facility operating lease figures listed above include leases which are considered operating leases to the department, but are considered capital leases to the Texas Facilities Commission. The portion of the facility operating leases considered capital leases by the Texas Facilities Commission is listed below. The leases are scheduled to expire on June 30, 2012 and November 30, 2013.

<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY2014</u>	<u>FY 2015-2019</u>
\$2,931,230	\$2,931,230	\$2,647,490	\$1,228,790	\$307,197	\$0

Included in the expenditures reported in the financial statements are the following amounts of rent paid or due under operating leases:

Fund Type	Amount
Special Revenue Funds	\$7,927,362

**NOTE 9 - EMPLOYEES' RETIREMENT PLAN**

The state has joint contributory retirement plans for virtually all its employees. The department participates in the plans administered by the Employees Retirement System of Texas by making monthly payments based on actuarial calculations. Future pension costs are the liabilities of the retirement system. The system does not account for each state agency separately. Annual financial reports prepared by the system include audited financial statements and actuarial assumptions and conclusions.

**NOTE 10 - DEFERRED COMPENSATION**

State employees may elect to defer a portion of their earnings for income tax and investment purposes pursuant to

authority granted in the TEX. GOV'T. CODE ANN., sec. 609.001.

The state's 457 plan complies with the Internal Revenue Code Sec. 457. Deductions, purchased investments and earnings attributed to the 457 plan are the property of the state subject only to the claims of the state's general creditors. Participant's rights under the plan are equal to those of the general creditors of the state in an amount equal to the fair market value of the 457 account for each participant. The state has no liability under the 457 plan and it is unlikely that plan assets will be used to satisfy the claims of general creditors in the future.

The state also administers another plan; 'TexaSaver' created in accordance with Internal Revenue Code Sec. 401(k). The assets of this plan do not belong to the state. The state has no liability related to this plan.

**NOTE 11 - POST EMPLOYMENT HEALTH CARE AND LIFE INSURANCE BENEFITS**

See the financial statements of the Employees Retirement System for information regarding post employment health care and life insurance benefits.

**NOTE 12 - INTERFUND ACTIVITY / TRANSACTIONS**

The department has numerous transactions between funds and agencies. Individual interfund balances at August 31, 2009 were as follows:

Due From/To Other Agencies:

GENERAL REVENUE	\$ <u>DUE FROM OTHER AGENCIES</u>	\$ <u>DUE TO OTHER AGENCIES</u>	<u>SOURCE</u>
Appd Fund 0001, D23 Fund 0001: (Agency 902, Appd Fund 0001)	1,568,530		N/A
Appd Fund 0900, D23 Fund 0090: (Agency 902, Appd Fund 0001)		1,308,103	N/A
Appd Fund 5015, D23 Fund 5015: (Agency 506, Appd Fund 5015)		3,798	N/A
(Agency 711, Appd Fund 0001)		114,110	N/A
(Agency 713, Appd Fund 0001)		286	N/A
(Agency 714, Appd Fund 5015)		4,152	N/A
(Agency 715, Appd Fund 0001)		44,138	N/A
(Agency 717, Appd Fund 0001)		11,077	N/A
(Agency 721, Appd Fund 5015)		280,999	N/A
(Agency 724, Appd Fund 0001)		4,802	N/A
(Agency 730, Appd Fund 5015)		12,105	N/A
(Agency 731, Appd Fund 5015)		264	N/A
(Agency 732, Appd Fund 0001)		2,534	N/A
(Agency 733, Appd Fund 0001)		137,127	N/A



	DUE FROM OTHER AGENCIES	DUE TO OTHER AGENCIES	SOURCE
	\$	\$	
(Agency 734, Appd Fund 5015)		389	N/A
(Agency 735, Appd Fund 5015)		213	N/A
(Agency 738, Appd Fund 5015)		3,773	N/A
(Agency 743, Appd Fund 5015)		132	N/A
(Agency 747, Appd Fund 5015)		218	N/A
(Agency 751, Appd Fund 0001)		7,676	N/A
(Agency 752, Appd Fund 5015)		16,633	N/A
(Agency 753, Appd Fund 5015)		14,050	N/A
(Agency 754, Appd Fund 5015)		19,693	N/A
(Agency 755, Appd Fund 5015)		4,468	N/A
(Agency 756, Appd Fund 5015)		7,735	N/A
(Agency 757, Appd Fund 0001)		3,436	N/A
(Agency 759, Appd Fund 5015)		7,093	N/A
(Agency 760, Appd Fund 0001)		110	N/A
(Agency 765, Appd Fund 5015)		901	N/A
(Agency 781, Appd Fund 5015)		81,550	N/A
(Agency 783, Appd Fund 0001)		282	N/A
(Agency 784, Appd Fund 5015)		3,248	N/A
Appd Fund 5140, D23 Fund 5140:			
(Agency 305, Appd Fund 5140)		6,367	N/A
(Agency 332, Appd Fund 5140)		22	
(Agency 530, Appd Fund 5140)		2,862	N/A
(Agency 781, Appd Fund 5140)		2,087	N/A
<b>SPECIAL REVENUE</b>			
Appd Fund 0006, D23 Fund 0006:			
(Agency 241, Appd Fund 0006)		1,788,731	Transfer
(Agency 302, Appd Fund 0006)		1,161,832	Transfer
(Agency 320, Appd Fund 0006)		994,852	Transfer
(Agency 360, Appd Fund 0006)		276,795	Transfer
(Agency 405, Appd Fund 0006)		47,068,350	Transfer
(Agency 727, Appd Fund 0001)		1,376,715	Transfer
(Agency 902, Appd Fund 0001)	190,588,865		Transfer
<b>Federal Pass-Throughs</b>			
(Agency 405, Appd Fund 0006)		229,847	Federal P-T
(Agency 458, Appd Fund 0001)		17,020	Federal P-T
(Agency 701, Appd Fund 0148)	12,240		Federal P-T
(Agency 715, Appd Fund 9999)		32,900	Federal P-T



	DUE FROM OTHER AGENCIES	DUE TO OTHER AGENCIES	SOURCE
	\$	\$	
(Agency 721, Appd Fund 9999)		20,467	Federal P-T
(Agency 727, Appd Fund 9999)		796,446	Federal P-T
(Agency 753, Appd Fund 9999)		119,379	Federal P-T
(Agency 754, Appd Fund 9999)		49,659	Federal P-T
(Agency 760, Appd Fund 9999)		15,171	Federal P-T
<b>State Pass-Throughs</b>			
(Agency 320, Appd Fund 0001)		695,562	State P-T
(Agency 405, Appd Fund 0006)		20,144	State P-T
(Agency 696, Appd Fund 0001)		30,892	State P-T
(Agency 711, Appd Fund 0001)		3,908	State P-T
<b>CAPITAL PROJECTS</b>			
Appd Fund 7604, D23 Fund 7604:			
(Agency 347, Appd Fund 7604)	294,568		Transfer
<b>Total Due From/To Other Agencies (Exh I)</b>	<b>\$ 192,464,203</b>	<b>\$ 56,805,103</b>	

Due From/To Other Funds:

	DUE FROM OTHER FUNDS	DUE TO OTHER FUNDS	SOURCE
	\$	\$	
<b>GENERAL REVENUE</b>			
Appd Fund 0900, D23 Fund 0090:			
(Agency 601, Appd Fund 0006)		2,668,621	N/A
<b>SPECIAL REVENUE</b>			
Appd Fund 0006, D23 Fund 0006:			
(Agency 601, Appd Fund 0365)	27,070,849		N/A
(Agency 601, Appd Fund 0865)	1,879,387	1,792,819	N/A
(Agency 601, Appd Fund 0900)	2,668,621		N/A
Appd Fund 0365, D23 Fund 0375:			
(Agency 601, Appd Fund 0006)		27,070,849	N/A
<b>ENTERPRISE FUND</b>			
Appd Fund 0865, D23 Fund 0865:			
(Agency 601, Appd Fund 0006)	1,792,819	1,879,387	N/A
<b>Total Due From/To Other Funds (Exh I and III)</b>	<b>\$ 33,411,676</b>	<b>\$ 33,411,676</b>	



Operating Transfers In/Out (\*):

	<u>TRANSFERS IN</u>	<u>TRANSFERS OUT</u>
	\$	\$
Appd Fund 0001, D23 Fund 0001: (Agency 902, Appd Fund 0001)	1,568,530	2,862,306
<b>Total Transfers for D23 Fund 0001</b>	<u>1,568,530</u>	<u>2,862,306</u>
Appd Fund 0006, D23 Fund 0006: (Agency 241, Appd Fund 0006)		967,154
(Agency 302, Appd Fund 0006)		6,719,399
(Agency 320, Appd Fund 0006)		6,829,352
(Agency 347, Appd Fund 0507)		316,254
(Agency 347, Appd Fund 0735)		4,678
(Agency 360, Appd Fund 0006)		3,884,670
(Agency 405, Appd Fund 0006)		612,034,309
(Agency 529, Appd Fund 0006)		76,082,408
(Agency 582, Appd Fund 5071)		68,792,707
(Agency 601, Appd Fund 0008)		261,837,320
(Agency 601, Appd Fund 0365)	599,980,487	
(Agency 601, Appd Fund 0865)		19,317,014
(Agency 701, Appd Fund 0006)		50,000,000
(Agency 727, Appd Fund 0001)		7,306,015
(Agency 902, Appd Fund 0001)	2,226,424,339	
<b>Total Transfers for D23 Fund 0006</b>	<u>2,826,404,826</u>	<u>1,114,091,280</u>
Appd Fund 0008, D23 Fund 0010: (Agency 601, Appd Fund 0006)	261,837,320	
<b>Total Transfers for D23 Fund 0010</b>	<u>261,837,320</u>	
Appd Fund 0036, D23 Fund 0036: (Agency 454, Appd Fund 0036)	749,908	
<b>Total Transfers for D23 Fund 0036</b>	<u>749,908</u>	
Appd Fund 0365, D23 Fund 0375/0377: (Agency 601, Appd Fund 0006)		599,980,487
<b>Total Transfers for D23 Fund 0375/0377</b>		<u>599,980,487</u>
Appd Fund 0865, D23 Fund 0865: (Agency 601, Appd Fund 0006)	19,317,014	
<b>Total Transfers for D23 Fund 0865</b>	<u>19,317,014</u>	



	<u>TRANSFERS IN</u>	<u>TRANSFERS OUT</u>
	\$	\$
Appd Fund 7604, D23 Fund 7604: (Agency 347, D23 Fund 7604)	16,437,538	
<b>Total Transfers for D23 Fund 7604</b>	<u>16,437,538</u>	
<b>Total Operating Transfers (Exh. II and IV)</b>	<u>\$ 3,126,315,136</u>	<u>\$ 1,716,934,073</u>

\* See Note 1 H (7) for detailed information on Transfers In/Out.

**NOTE 13 - CONTINUANCE SUBJECT TO REVIEW**

The Department is currently subject to a continuance review. Under the Texas Sunset Act, the Department will be abolished effective September 1, 2011, unless continued in existence by the 81st Legislature as provided by the Act. If abolished, the Department may continue until September 1, 2012 to close out its operations. In the event that the Department is abolished pursuant to the Texas Sunset Act or other law, Section 325.017(f), Texas Government Code, acknowledges that such action will not alter the obligation of the State to pay bonded indebtedness and all other obligations of the abolished agency.

**NOTE 14 – ADJUSTMENTS TO FUND BALANCES AND NET ASSETS**

In the Long-Term Liabilities Adjustment Column, the \$15,585,000 restatement of long-term liabilities is due to recording the beginning balance of Pollution Remediation Obligations as required by GASB Statement No.49, *Accounting and Financial Reporting for Pollution Remediation Obligations*, which became effective September 1, 2008.

In the Capital Asset Adjustment Fund Type, the \$7,924,388 restatement of fixed assets is caused by corrections to property in fiscal year 2009. When an asset is incorrectly accounted for in one fiscal year and corrected in a subsequent fiscal year, the value and accumulated depreciation, if depreciable, must be adjusted.

**NOTE 15 - CONTINGENT LIABILITIES**

A. Litigation

<u>Type of Suit</u>	<u>Number of Suits</u>	<u>Amount in Controversy</u>
Contract	17	Amounts claimed range from \$13,500 to \$7,137,996. Total claims with amounts indicated came to approximately \$13,435,327. Six of the 17 indicated only an approximate amount of the claim or did not specify the amount.
Inverse Condemnation	32	Amounts claimed range from \$14,500 to \$375,000. Total claims with amounts indicated came to approximately \$593,500. Twenty-nine of the 32 indicated only an approximate amount of the claim or did not specify the amount.



<u>Type of Suit</u>	<u>Number of Suits</u>	<u>Amount in Controversy</u>
Employment Law and Related Lawsuits	15	Monetary amounts have not been specified in the majority of these cases. Liability against the department is limited to \$300,000. However, there is no limit on attorney fees and front pay.
Tort Claims	123	Statutory limits of liability on these cases are \$250,000 per person or \$500,000 per accident. Amounts claimed range from \$5,331 to \$500,000. Total claims, including estimates of liability limits where no amounts were specified, came to approximately \$36,716,520.
Workers' Comp	2	Amounts of claims were not specified.
Declaratory Judgment	3	Monetary amounts have not been specified in two of the three cases. Total claimed with amounts indicated is \$24,100,816.

The type and volume of activity for which the department is responsible exposes it to a large number of lawsuits. The department has vigorously contested lawsuits brought against it and has usually prevailed or made settlements substantially less than the amounts originally sought.

Settlements are paid by the Texas Comptroller of Public Accounts from the Claims and Refunds Appropriation. Attorney General records indicate that the lawsuits listed above were pending as of August 31, 2009. The department management's opinion is that the probable outcome of these cases will not materially affect the financial position of the department.

B. Claims by Contractors

The type and volume of activity for which the department is responsible exposes it to claims by contractors. The department will most likely settle these claims at substantially less than the amount originally sought. However, if a settlement between the department's claims committee and the contractor can not be reached, these claims will result in future litigation. The department management's opinion is that the probable outcome of these claims will not materially affect the financial position of the department. As of August 31, 2009 the contingent liability as a result of claims by contractors was \$10,086,736.

C. Federal Reimbursements and Grants

The federal eligibility for funds received by the department is subject to review by federal agencies. While the reviews may result in refunds or adjustments, past reviews have resulted in only minor adjustments which had no material financial impact.

D. Sick Leave

Sick leave, which can be accumulated indefinitely, is earned at the rate of eight hours per month, and is paid only to an employee when actually ill, or to the employee's estate upon death of the employee. The maximum sick leave that may be paid to an estate is one-half of the employee's accumulated hours, or 336 hours, whichever is less. A liability for sick leave entitlement is not recorded in the General Long-Term Debt Account Group, since experience indicates the probability of a material effect on any given year's operations as a result of deaths, or an abnormally high rate of

illnesses, is minimal.

E. Derivatives

As of August 31, 2009, the department had not entered into any investment derivative transactions.

**NOTE 16 - SUBSEQUENT EVENTS**

House Bill 3097 passed during the 81st Session of the Texas Legislature created from TxDOT, the Texas Department of Motor Vehicles (TxDMV) which becomes operational on November 1, 2009. The TxDMV will be responsible for the following duties: vehicle registration and titling, issuing motor carrier operating authority, motor carrier enforcement, licensing vehicle dealers, and awarding law enforcement agencies grants to reduce auto theft and increase public awareness.

**NOTE 17 - RISK MANAGEMENT**

The department is exposed to a wide range of risks, due to the size, scope, and nature of its activities. Some of these risks include, but are not limited to, property and casualty losses, workers' compensation and health benefit claims, theft, damage of assets, etc.

The department retains these risks, and manages them through self-insurance and safety programs, which are the responsibility of the Occupational Safety Division [See page 82].

**NOTE 18 - MANAGEMENT DISCUSSION AND ANALYSIS**

As permitted by GASB Statement No. 34, Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments, the State has adopted the modified approach for reporting its highway system. As required by this Statement, the Texas Department of Transportation (TxDOT) conducts condition assessments on the highway system under its Texas Maintenance Assessment Program (TxMAP). TxMAP is conducted on a yearly basis (GASB requirement is every three years) and results in overall condition levels for the Interstate and Non-Interstate highway systems. In conjunction with the TxMAP, the Texas Transportation Commission has adopted condition levels of 80% for the Interstate system, 75% for the Non-Interstate system, and 80% for the Central Texas Turnpike System. The condition assessment results for FY 2009 reflect condition levels of 81.4% (83.7% in FY 2008) for the Interstate system and 76.5% (79.0% in FY 2008) for the Non-Interstate system. For the Central Texas Turnpike System, the condition assessment results for FY 2009 reflect condition levels of 90.5% (91.7% in FY 2008).

The modified approach also requires that the State estimate the expenditures that will be required to maintain the highway system at or above the adopted condition levels. For FY 2009, TxDOT computed estimates of \$534 million for the Interstate system, \$2.688 billion for the Non-Interstate system, and \$9.2 million for the Central Texas Turnpike System. Actual expenditures were \$326 million for the Interstate system, \$1.5 billion for the Non-Interstate system, and \$7.3 million for the Central Texas Turnpike System.

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***NOTE 19 - THE FINANCIAL REPORTING ENTITY***

The accompanying financial statements include the financial position and results of operations of all organizations, activities, and functions considered to be within the scope of the department's reporting entity.

As required by generally accepted accounting principles, the one transportation corporation is shown as a component unit of the department because of the significance of its financial relationship with the department. Although the corporation is a separate legal entity, the department exercises sufficient authority over its assets, management and operations, to require its inclusion in the accompanying financial statements. The financial activities of the corporation are shown as local fund 999 and presented in a blended format on the department's financial statements [See Note 1-C(4)]. Complete financial information can be obtained by contacting the corporation directly:

Grand Parkway Association  
4544 Post Oak Place, Suite 222  
Houston, Texas 77027

The Texas Department of Transportation is a component unit of the state of Texas, and of the statewide Consolidated Annual Financial Report to be issued by the Texas Comptroller of Public Accounts. As such, the department will be audited by the state auditor only to the extent necessary to express an opinion on the financial position of the state as a whole. Accordingly, the state auditor will not express an opinion on the financial statements contained in this report.

***NOTE 20 - STEWARDSHIP, COMPLIANCE, & ACCOUNTABILITY***

The department is not aware of any material violations of finance-related legal or contractual provisions.

***NOTE 21 - RELATED PARTIES***

The department currently has no related parties to report.

***NOTE 22 - DONOR-RESTRICTED ENDOWMENTS***

The department did not have any donor-restricted endowments.

***NOTE 23 - EXTRAORDINARY AND SPECIAL ITEMS***

The department did not have any special or extraordinary items during fiscal year 2009.

***NOTE 24 - DISAGGREGATION OF RECEIVABLE AND PAYABLE BALANCES***

Federal Receivables as of August 31, 2009 were \$350,546,796. Of this amount, \$329,876,436 is current and \$20,670,360 is non-current. Even though the category of Contracts Payable is shown on our paper copy annual report, the

Comptroller’s Office has requested this liability be shown as Other Current Liabilities in the Uniform Statewide Accounting System. As of August 31, 2009, Retainage Contracts Payable was \$144,551,772 in the State Highway Fund. See Note 1F(8).

**NOTE 25 - TERMINATION BENEFITS**

For the fiscal year ended August 31, 2009, the department did not have any termination benefits related payments.

**NOTE 26 - SEGMENT INFORMATION**

TxDOT has a single enterprise fund (Fund 865) related to the construction, operation, and maintenance of the Central Texas Turnpike System; therefore, segment information is not being reported.

**NOTE 27 - PASS THROUGH TOLLS**

As a means of financing state highway capital improvements and related maintenance costs, TxDOT has entered into pass through toll agreements with a number of local entities. Under these agreements, the local entities will finance, design and construct certain roadway projects and maintain them for a specified period of time. Upon completion of the projects, TxDOT will make payments (i.e. pass through toll payments) to the entities based on traffic utilization of the roadways and other payment requirements governed by the agreements. Motorists traveling these roadways will not be required to pay a toll. Thus far, a long term liability of \$20,100,000 has been recognized for completed or partially completed agreements (See Note 5.) Liabilities for uncompleted agreements have not been recognized; however, the maximum amounts of future obligations for the executed agreements as of August 31, 2009 are listed below:

FISCAL YEAR								
2010	2011	2012	2013	2014	2015-2019	2020-2024	2025-2029	TOTAL
\$ 35,055,728	\$ 99,073,372	\$ 120,652,513	\$ 144,556,680	\$ 144,556,680	\$ 670,211,309	\$ 162,327,965	\$ 15,139,276	\$ 1,391,573,523



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## Required Supplementary Information

As permitted by GASB Statement No. 34, Basic Financial Statements – and Management’s Discussion and Analysis – for State and Local Governments, the State has adopted the modified approach for reporting its highway system. Under the modified approach, depreciation is not reported and certain preservation and maintenance costs are expensed.

The modified approach requires that the State:

- Maintain an asset management system that includes an up-to date inventory of eligible infrastructure assets,
- Perform condition assessments of the eligible infrastructure assets and summarize the results using a measurement scale in order to document that the eligible infrastructure assets are being preserved approximately at (or above) the condition level established and disclosed by the government, and
- Estimate each year the annual amount needed to maintain and preserve the eligible infrastructure assets at the condition level established and disclosed by the government.

Although bridges are an integral part of the highway system, the State has elected to depreciate bridges. Therefore, they are not reported using the modified approach.

### Condition Assessments

The Texas Department of Transportation (TxDOT) performs yearly condition assessments through its Texas Maintenance Assessment Program (TxMAP). Under this program, visual inspections are conducted on approximately 10% of the Interstate system and 5% of the Non-Interstate system (US, State, and FM roadways). For each section of highway observed, twenty-one elements separated into three highway components are assessed scores from 0 to 5 (0 = N/A, 1 = Failed, 2 = Poor, 3 = Fair, 4 = Good, 5 = Excellent) in order to determine the condition of the highways. Each element within a component is weighted according to importance and each component is weighted according to importance to determine the overall condition of the highways. The overall score is converted to a percentage measurement for reporting (1 = 20%, 2 = 40%, 3 = 60%, 4 = 80%, 5 = 100%).

### Assessed Conditions

TxDOT has adopted a minimum condition level of 80% for the Interstate System, 75% for the Non-Interstate system, and 80% for the Central Texas Turnpike System based on TxMAP assessments.

Year	Interstate Condition (Minimum 80%)	Non-Interstate Condition (Minimum 75%)	Central Texas Turnpike System (Minimum 80%)
2009	81.4%	76.5%	90.5%
2008	83.7%	79.0%	91.7%
2007	84.1%	79.5%	N/A
2006	83.4%	78.0%	N/A
2005	82.1%	77.9%	N/A

## Required Supplementary Information

### Estimated and Actual Costs for Maintenance

The table below provides a comparison between TxDOT's estimate of maintenance expenditures required to maintain the highway system at or above the adopted condition levels and the actual expenditures.

Interstate Highways	2009	2008	2007	2006	2005
Estimate	\$534,263,128	\$502,127,903	\$438,460,363	\$469,817,714	\$ 314,000,000
Actual	\$326,304,671	\$438,236,618	\$471,924,721	\$434,087,757	\$ 427,107,013
Other Highways	2009	2008	2007	2006	2005
Estimate	\$2,687,869,178	\$2,455,243,159	\$1,702,612,423	\$1,608,015,154	\$ 1,590,416,683
Actual	\$1,519,109,684	\$1,649,316,888	\$1,881,284,935	\$1,750,437,888	\$ 1,604,781,208
Central Texas Turnpike System	2009	2008*	2007	2006	2005
Estimate	\$9,178,651	\$6,909,785	N/A	N/A	N/A
Actual	\$7,261,987	\$5,411,318	N/A	N/A	N/A

\* 2008 is the first fiscal year in which a condition assessment has been conducted for the Central Texas Turnpike System which opened in FY 2007.

### Factors Affecting Condition Assessments

TxDOT continues to develop its methods for determining such estimates. As additional experience is acquired in the estimation and reporting processes, TxDOT hopes to achieve a greater correlation between the estimated maintenance expenditures needed to maintain the highway system at or above the adopted condition levels and the condition level of the highways. In comparing actual expenditures to estimated expenditures, factors such as increases in traffic, legislative mandates, budgetary constraints, and environmental effects (rainfall, drought, hurricane, freeze thaw, etc) should be considered as they may have a major impact on needed funds and the condition of Texas roads.



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# Combining Financial Statements



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**Exhibit A-1**

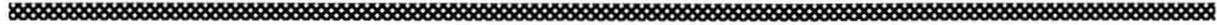
**COMBINING BALANCE SHEET -ALL GENERAL AND CONSOLIDATED FUNDS  
August 31, 2009**



	GENERAL FUND ACCOUNT (0001)* U/F (0001)	TRAFFIC SAFETY-CRASH RECORDS INFORMATION SYSTEMS ACCOUNT (0036)* U/F (0036)	TEXAS HIGHWAY BEAUTIFICATION ACCOUNT (0071)* U/F (0071)
	\$	\$	\$
<b>ASSETS:</b>			
Current Assets:			
Cash and Cash Equivalents:			
Cash on Hand			480
Cash in State Treasury			853,535
Legislative Appropriations	1,648,243		
Loans and Contracts [Note 1 F(4)]	52,348		
Due From Other Agencies (Note 12)	1,568,530		
Total Current Assets	<u>3,269,121</u>	<u>0</u>	<u>854,015</u>
Non-Current Assets:			
Loans and Contracts [Note 1 F(4)]	354,575		
Total Non-Current Assets	<u>354,575</u>	<u>0</u>	<u>0</u>
<b>TOTAL ASSETS:</b>	<b><u>3,623,696</u></b>	<b><u>0</u></b>	<b><u>854,015</u></b>
<b>LIABILITIES AND FUND BALANCES</b>			
Liabilities:			
Current Liabilities:			
Payables:			
Accounts Payable	1,713,698		3,225
Payroll Payable	402,104		39,462
Due to Other Funds (Note 12)			
Due to Other Agencies (Note 12)			
Total Current Liabilities	<u>2,115,802</u>	<u>0</u>	<u>42,687</u>
<b>TOTAL LIABILITIES:</b>	<b><u>2,115,802</u></b>	<b><u>0</u></b>	<b><u>42,687</u></b>
<b>FUND FINANCIAL STATEMENT- FUND BALANCES</b>			
FUND BALANCES (DEFICITS):			
Reserved For:			
Encumbrances	195,920		
Loans & Contracts	354,575		
Unreserved:			
Undesignated:			
Unencumbered Legislative Appropriations			
Future Operations	957,399		
Consolidated Funds			811,328
<b>TOTAL FUND BALANCES</b>	<b><u>1,507,894</u></b>	<b><u>0</u></b>	<b><u>811,328</u></b>
<b>TOTAL LIABILITIES &amp; FUND BALANCE</b>	<b>\$ <u>3,623,696</u></b>	<b>\$ <u>0</u></b>	<b>\$ <u>854,015</u></b>

\* Appropriated Fund is noted as (XXXX), USAS D23 Fund is noted as U/F (XXXX)

The accompanying notes to the financial statements are an integral part of this financial statement.



SUSPENSE FUND ACCOUNT (0900)* U/F (0090)	TEXAS COLLEGIATE LICENSE PLATE PROGRAM ACCOUNT (5015)* U/F (5015)	SPECIALTY LICENSE PLATE ACCOUNT (5140)* U/F (5140)	TOTAL
\$	\$	\$	\$
			480
3,976,724	786,992	11,338	5,628,589
			1,648,243
			52,348
			1,568,530
<u>3,976,724</u>	<u>786,992</u>	<u>11,338</u>	<u>8,898,190</u>
			354,575
<u>0</u>	<u>0</u>	<u>0</u>	<u>354,575</u>
<u>3,976,724</u>	<u>786,992</u>	<u>11,338</u>	<u>9,252,765</u>
			1,716,923
2,668,621			441,566
1,308,103	786,992	11,338	2,668,621
<u>3,976,724</u>	<u>786,992</u>	<u>11,338</u>	<u>2,106,433</u>
			6,933,543
<u>3,976,724</u>	<u>786,992</u>	<u>11,338</u>	<u>6,933,543</u>
			195,920
			354,575
			957,399
			811,328
<u>0</u>	<u>0</u>	<u>0</u>	<u>2,319,222</u>
<u>3,976,724</u>	<u>786,992</u>	<u>11,338</u>	<u>9,252,765</u>
\$	\$	\$	\$

**Exhibit A-2**

**COMBINING STATEMENT OF REVENUES, EXPENDITURES, & CHANGES IN  
FUND BALANCES -ALL GENERAL AND CONSOLIDATED FUNDS**

For the fiscal year ended August 31, 2009

	GENERAL FUND ACCOUNT (0001)* U/F (0001)	TRAFFIC SAFETY-CRASH RECORDS INFORMATION SYSTEMS ACCOUNT (0036)* U/F (0036)	TEXAS HIGHWAY BEAUTIFICATION ACCOUNT (0071)* U/F (0071)
<b>REVENUES:</b>	\$	\$	\$
Legislative Appropriations:			
Original Appropriations	3,579,072		
Additional Appropriations	1,434,537		
Federal Pass Through Revenue			
State Pass Through Revenue			
Licenses, Fees and Permits [Note 1 H(4)]			828,665
Sale of Goods & Services	1,099,404		
<b>TOTAL REVENUES</b>	<u>6,113,013</u>	<u>0</u>	<u>828,665</u>
<b>EXPENDITURES:</b>			
Salaries and Wages	2,237,419		353,201
Payroll Related Costs	1,198,664		131,537
Professional Fees and Services	41,546	749,740	
Travel	59,507		4,070
Materials and Supplies	127,172		
Communications and Utilities			3,492
Repairs and Maintenance	5,685		
Rentals and Leases	1,716		
Intergovernmental Payments	1,619,138		
Other Expenditures	35,581	168	3,984
Capital Outlay	1,728,966		
<b>TOTAL EXPENDITURES</b>	<u>7,055,394</u>	<u>749,908</u>	<u>496,284</u>
<b>EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES</b>	<u>(942,381)</u>	<u>(749,908)</u>	<u>332,381</u>
<b>OTHER FINANCING SOURCES (USES):</b>			
Transfers In [Note 1 H(7)]	1,568,530	749,908	
Transfers Out [Note 1 H(7)]	(2,862,306)		
Sale of Fixed Assets	2,703,976		
<b>TOTAL OTHER FINANCING SOURCES (USES)</b>	<u>1,410,200</u>	<u>749,908</u>	<u>0</u>
<b>NET CHANGE IN FUND BALANCES</b>	467,819	0	332,381
<b>FUND FINANCIAL STATEMENT-FUND BALANCES</b>			
<b>FUND BALANCES, Sept. 1, 2008</b>	1,045,271	0	478,947
Appropriations Lapsed	(5,196)		
<b>FUND BALANCES, Aug. 31, 2009 (Exhibit A-1)</b>	<u>\$ 1,507,894</u>	<u>\$ 0</u>	<u>\$ 811,328</u>

\* Appropriated Fund is noted as (XXXX), USAS D23 Fund is noted as U/F (XXXX)  
The accompanying notes to the financial statements are an integral part of this financial statement.

SUSPENSE FUND ACCOUNT (0900)* U/F (0090)	TEXAS COLLEGIATE LICENSE PLATE PROGRAM ACCOUNT (5015)* U/F (5015)	SPECIALTY LICENSE PLATE ACCOUNT (5140)* U/F (5140)	TOTAL
\$	\$	\$	\$
			3,579,072
			1,434,537
			0
			0
			828,665
			1,099,404
<u>0</u>	<u>0</u>	<u>0</u>	<u>6,941,678</u>
			2,590,620
			1,330,201
			791,286
			63,577
			127,172
			3,492
			5,685
			1,716
			1,619,138
			39,733
			1,728,966
<u>0</u>	<u>0</u>	<u>0</u>	<u>8,301,586</u>
<u>0</u>	<u>0</u>	<u>0</u>	<u>(1,359,908)</u>
			2,318,438
			(2,862,306)
			2,703,976
<u>0</u>	<u>0</u>	<u>0</u>	<u>2,160,108</u>
0	0	0	800,200
0	0	0	1,524,218
			(5,196)
<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ 2,319,222</u>

**EXHIBIT B-1**  
**COMBINING BALANCE SHEET - SPECIAL REVENUE FUNDS**  
**August 31, 2009**

	STATE HIGHWAY FUND (0006)* U/F (0006, 0016-0018, 0121-0122, 0130 and 0513-0515)	STATE INFRA- STRUCTURE BANK (0006)* U/F (0099)
	\$	\$
<b>ASSETS</b>		
Current Assets:		
Cash and Cash Equivalents:		
Cash on Hand	952,268	
Cash in Bank	108,530,478	
Cash in State Treasury	3,440,620,176	84,530,837
Receivables:		
Federal	329,552,770	
Other Intergovernmental	197,552,264	
Interest and Dividends		10,909,285
Accounts Receivable	30,147,739	
Due from Other Funds (Note 12)	31,618,857	
Due from Other Agencies (Note 12)	190,601,105	
Consumable Inventories	114,775,577	
Loans and Contracts [Note 1 F(4)]		12,273,364
<b>Total Current Assets</b>	<b>4,444,351,234</b>	<b>107,713,486</b>
Non-current Assets:		
Federal Receivable	20,670,360	
Loans and Contracts [Note 1 F(4)]	22,567,799	232,837,695
Other Non-Current Assets		7,918,180
<b>Total Non-Current Assets</b>	<b>43,238,159</b>	<b>240,755,875</b>
<b>TOTAL ASSETS</b>	<b>4,487,589,393</b>	<b>348,469,361</b>
<b>LIABILITIES AND FUND BALANCES:</b>		
Liabilities:		
Current Liabilities:		
Payables:		
Accounts Payable	816,690,631	
Contracts Payable [Note 1 F(8)]	144,551,772	
Payroll Payable	65,320,809	
Due to Other Funds (Note 12)	1,792,819	
Due to Other Agencies (Note 12)	54,698,670	
Deferred Revenues [Note 1 F(9)]	3,323,990,045	
Short Term Debt (Note 4)	300,000,000	
<b>Total Current Liabilities</b>	<b>4,707,044,746</b>	<b>0</b>
<b>TOTAL LIABILITIES</b>	<b>4,707,044,746</b>	<b>0</b>
<b>FUND FINANCIAL STATEMENT-FUND BALANCES</b>		
FUND BALANCES (DEFICITS):		
Reserved For:		
Encumbrances	156,141,591	
Inventories	114,775,577	
Imprest	148,633	
Loans & Contracts	22,567,799	232,837,695
Unreserved Designated for:		
Highway Construction and Maintenance	(513,088,953)	
State Infrastructure Bank		115,631,666
Undesignated:		
Texas Transportation Corporations		
<b>TOTAL FUND BALANCES</b>	<b>(219,455,353)</b>	<b>348,469,361</b>
<b>TOTAL LIABILITIES &amp; FUND BALANCES:</b>	<b>\$ 4,487,589,393</b>	<b>\$ 348,469,361</b>

\* Appropriated Fund is noted as (XXXX), USAS D23 Fund is noted as U/F (XXXX)

The accompanying notes to the financial statements are an integral part of this financial statement.

FEDERAL AMERICAN RECOVERY & REINVESTMENT FUND (0006)* U/F (0369)	TEXAS MOBILITY FUND (0365)* U/F (0365, 0367, 368, 370, 371, 372, 375, 377)	TEXAS TRANSPORTATION CORPORATIONS (9999)* U/F (0999)	TOTAL
\$	\$	\$	\$
			952,268
		618,047	109,148,525
	1,583,078,613		5,108,229,626
	323,666		329,876,436
			197,552,264
			10,909,285
	751,372	139,558	31,038,669
			31,618,857
			190,601,105
			114,775,577
			12,273,364
<u>0</u>	<u>1,584,153,651</u>	<u>757,605</u>	<u>6,136,975,976</u>
			20,670,360
			255,405,494
			7,918,180
<u>0</u>	<u>0</u>	<u>0</u>	<u>283,994,034</u>
<u>0</u>	<u>1,584,153,651</u>	<u>757,605</u>	<u>6,420,970,010</u>
			224,850
		382,807	817,298,288
			144,551,772
	27,070,849		65,320,809
			28,863,668
	323,666		54,698,670
			3,324,313,711
			300,000,000
<u>0</u>	<u>27,619,365</u>	<u>382,807</u>	<u>4,735,046,918</u>
<u>0</u>	<u>27,619,365</u>	<u>382,807</u>	<u>4,735,046,918</u>
			156,141,591
			114,775,577
			148,633
			255,405,494
	1,556,534,286		1,043,445,333
			115,631,666
		374,798	374,798
<u>0</u>	<u>1,556,534,286</u>	<u>374,798</u>	<u>1,685,923,092</u>
\$ <u>0</u>	\$ <u>1,584,153,651</u>	\$ <u>757,605</u>	\$ <u>6,420,970,010</u>

**EXHIBIT B-2**

**COMBINING STATEMENT OF REVENUES, EXPENDITURES, & CHANGES IN  
FUND BALANCES -SPECIAL REVENUE FUNDS  
For the fiscal year ended August 31, 2009**

	STATE HIGHWAY FUND (0006)* U/F (0006, 0016-0018, 0121-0122, 0130 and 0513-0515)	STATE INFRA- STRUCTURE BANK (0006)* U/F (0099)
<b>REVENUES:</b>	\$	\$
Taxes	39,631,000	
Federal Revenues	2,667,476,975	
Federal Pass Through Revenues	1,496,510	
Licenses, Fees and Permits [Note 1 H(4)]	1,255,425,482	
Interest & Investment Income	89,868,109	12,766,696
Land Income	14,151,673	
Settlement of Claims	1,530,671	
Sales of Goods and Services	242,997,226	
Other Revenues	3,487,854	
<b>TOTAL REVENUES</b>	<u>4,316,065,500</u>	<u>12,766,696</u>
<b>EXPENDITURES:</b>		
Salaries and Wages	631,841,865	
Payroll Related Costs	214,421,433	
Professional Fees and Services	285,999,868	
Travel	4,004,156	
Materials and Supplies	272,182,628	
Communications and Utilities	53,742,544	
Repairs and Maintenance	1,043,226,001	
Rentals and Leases	12,060,836	
Printing and Reproduction	5,993,863	
Claims and Judgments	10,094,356	
Federal Pass Through Expenditures	8,341,187	
State Grant Pass Through Expenditures	1,799,550	
Intergovernmental Payments	629,237,110	
Public Assistance Payments	15,834,123	
Other Expenditures	191,786,457	
Principal on State Bonds	205,000	
Interest on State Bonds	66,941,288	
Other Financing Fees	3,137,921	
Capital Outlay	3,269,002,730	
<b>TOTAL EXPENDITURES</b>	<u>6,719,852,916</u>	<u>0</u>
<b>EXCESS (DEFICIT) OF REVENUES OVER (UNDER) EXPENDITURES</b>	<u>(2,403,787,416)</u>	<u>12,766,696</u>
<b>OTHER FINANCING SOURCES (USES):</b>		
Operating Transfers In [Note 1 H (7)]	2,826,404,826	
Operating Transfers Out [Note 1 H (7)]	(1,114,091,280)	
Bond & Note Issued	16,000,000	
Insurance Recoveries	13,828,826	
Sale of Capital Assets	5,084,641	
<b>TOTAL OTHER FINANCING SOURCES (USES)</b>	<u>1,747,227,013</u>	<u>0</u>
<b>NET CHANGE IN FUND BALANCES</b>	<u>(656,560,403)</u>	<u>12,766,696</u>
<b>FUND FINANCIAL STATEMENT-FUND BALANCES</b>		
<b>FUND BALANCES, Sept. 1, 2008</b>	<b>437,105,050</b>	<b>335,702,665</b>
<b>FUND BALANCES, Aug. 31, 2009 (Exh. B-1)</b>	<u>\$ (219,455,353)</u>	<u>\$ 348,469,361</u>

\* Appropriated Fund is noted as (XXXX), USAS D23 Fund is noted as U/F (XXXX)

The accompanying notes to the financial statements are an integral part of this financial statement.

FEDERAL AMERICAN RECOVERY & REINVESTMENT FUND (0006)* U/F (0369)	TEXAS MOBILITY FUND (0365)* U/F (0365, 0367, 368, 370, 371, 372, 375, 377)	TEXAS TRANSPORTATION CORPORATIONS (9999)*	TOTAL
\$ 113,337,168			39,631,000
			2,780,814,143
	319,044,133		1,496,510
	15,087,643	5,764	1,574,469,615
			117,728,212
			14,151,673
			1,530,671
			242,997,226
		669,768	4,157,622
<u>113,337,168</u>	<u>334,131,776</u>	<u>675,532</u>	<u>4,776,976,672</u>
			631,841,865
			214,421,433
	273,859	1,189,364	287,463,091
			4,004,156
			272,182,628
			53,742,544
			1,043,226,001
			12,060,836
			5,993,863
			10,094,356
			8,341,187
			1,799,550
4,093,366			633,330,476
			15,834,123
46,952	28,546	337,293	192,199,248
	32,290,000		32,495,000
	228,627,558		295,568,846
	8,152,068		11,289,989
<u>109,196,850</u>	<u>269,372,031</u>	<u>1,526,657</u>	<u>3,378,199,580</u>
<u>113,337,168</u>	<u>269,372,031</u>	<u>1,526,657</u>	<u>7,104,088,772</u>
<u>0</u>	<u>64,759,745</u>	<u>(851,125)</u>	<u>(2,327,112,100)</u>
			2,826,404,826
	(599,980,487)		(1,714,071,767)
	1,208,495,000		1,224,495,000
			13,828,826
			5,084,641
<u>0</u>	<u>608,514,513</u>	<u>0</u>	<u>2,355,741,526</u>
<u>0</u>	<u>673,274,258</u>	<u>(851,125)</u>	<u>28,629,426</u>
<u>0</u>	<u>883,260,028</u>	<u>1,225,923</u>	<u>1,657,293,666</u>
<u>\$ 0</u>	<u>\$ 1,556,534,286</u>	<u>\$ 374,798</u>	<u>\$ 1,685,923,092</u>

**EXHIBIT C**

**COMBINING STATEMENT OF CHANGES IN ASSETS AND LIABILITIES -  
AGENCY FUNDS  
For the fiscal year ended August 31, 2009**



	Balances September 1, 2008	Additions	Deductions	Balances August 31, 2009
	\$	\$	\$	\$
<b>UNAPPROPRIATED RECEIPTS</b>				
<b>General Revenue Fund (0001), U/F (1001) *</b>				
Assets:				
Current:				
Cash on Hand	0	72,851,580	72,851,580	0
Total Assets	<u>0</u>	<u>72,851,580</u>	<u>72,851,580</u>	<u>0</u>
Liabilities:				
Current:				
Funds Held for Others	0	72,851,580	72,851,580	0
Total Liabilities	<u>0</u>	<u>72,851,580</u>	<u>72,851,580</u>	<u>0</u>
<b>OTHER AGENCY FUNDS</b>				
<b>Proportional Registration Distributive Fund (0021), U/F (0021)</b>				
Assets:				
Current:				
Cash on Hand	522,708	27,907,586	28,233,773	196,521
Cash in State Treasury	8,973,332	28,233,773	33,187,764	4,019,341
Total Assets	<u>9,496,040</u>	<u>56,141,359</u>	<u>61,421,537</u>	<u>4,215,862</u>
Liabilities:				
Current:				
Other Intergovernmental Payables	9,496,040	27,907,586	33,187,764	4,215,862
Total Liabilities	<u>9,496,040</u>	<u>27,907,586</u>	<u>33,187,764</u>	<u>4,215,862</u>
<b>Child Support-Employee Deduction Account (0807), U/F (0807)</b>				
Assets:				
Current:				
Cash in State Treasury	0	268,879	21,067	247,812
Total Assets	<u>0</u>	<u>268,879</u>	<u>21,067</u>	<u>247,812</u>
Liabilities:				
Current:				
Funds Held for Others	0	268,879	21,067	247,812
Total Liabilities	<u>0</u>	<u>268,879</u>	<u>21,067</u>	<u>247,812</u>
<b>Employees' Savings Bond Account (0901), U/F (0901)</b>				
Assets:				
Current:				
Cash in State Treasury	30,554	307,390	309,950	27,994
Total Assets	<u>30,554</u>	<u>307,390</u>	<u>309,950</u>	<u>27,994</u>
Liabilities:				
Current:				
Funds Held for Others	30,554	307,390	309,950	27,994
Total Liabilities	<u>30,554</u>	<u>307,390</u>	<u>309,950</u>	<u>27,994</u>

\* Appropriated Fund is noted as (XXXX), USAS D23 Fund is noted as U/F (XXXX)

The accompanying notes to the financial statements are an integral part of this financial statement.

**COMBINING STATEMENT OF CHANGES IN ASSETS AND LIABILITIES -  
AGENCY FUNDS (Concluded)**

	Balances September 1, 2008	Additions	Deductions	Balances August 31, 2009
	\$	\$	\$	\$
<b>OTHER AGENCY FUNDS</b>				
<b>County/Political Subdivision, Local Government Road/Airport Trust Account (0927), U/F (0927)</b>				
<b>Assets:</b>				
Current:				
Cash in State Treasury	175,321,387	231,468,714	140,363,739	266,426,362
<b>Total Assets</b>	<u>175,321,387</u>	<u>231,468,714</u>	<u>140,363,739</u>	<u>266,426,362</u>
<b>Liabilities:</b>				
Current:				
Funds Held for Others	175,321,387	231,468,714	140,363,739	266,426,362
<b>Total Liabilities</b>	<u>175,321,387</u>	<u>231,468,714</u>	<u>140,363,739</u>	<u>266,426,362</u>
<b>Direct Deposit Correction Account (0980), U/F (0980 and 9014)</b>				
<b>Assets:</b>				
Current:				
Cash in State Treasury	49,388	883,177	931,180	1,385
<b>Total Assets</b>	<u>49,388</u>	<u>883,177</u>	<u>931,180</u>	<u>1,385</u>
<b>Liabilities:</b>				
Current:				
Funds Held for Others	49,388	883,177	931,180	1,385
<b>Total Liabilities</b>	<u>49,388</u>	<u>883,177</u>	<u>931,180</u>	<u>1,385</u>
<b>TOTALS - ALL AGENCY FUNDS</b>				
<b>Assets:</b>				
Current:				
Cash on Hand	522,708	100,759,166	101,085,353	196,521
Cash in State Treasury	184,374,661	261,161,933	174,813,700	270,722,894
<b>Total Assets</b>	<u>184,897,369</u>	<u>361,921,099</u>	<u>275,899,053</u>	<u>270,919,415</u>
<b>Liabilities:</b>				
Current:				
Other Intergovernmental Payables	9,496,040	27,907,586	33,187,764	4,215,862
Funds Held for Others	175,401,329	305,779,740	214,477,516	266,703,553
<b>Total Liabilities</b>	<u>\$ 184,897,369</u>	<u>\$ 333,687,326</u>	<u>\$ 247,665,280</u>	<u>\$ 270,919,415</u>

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**Appendix C**

**Information Concerning the Funding of Federal-Aid Highways**

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## APPENDIX C

### INFORMATION CONCERNING THE FUNDING OF FEDERAL-AID HIGHWAYS

#### The Federal-Aid Highway Program

The Federal-Aid Highway Program (“FAHP”) is an “umbrella” term that encompasses most of the federal programs providing highway funds to the states. The FAHP must be periodically reauthorized by Congress. Authorizing legislation for highways began with the Federal-Aid Road Act of 1916 and the Federal Highway Act of 1921. These acts provided the foundation for the FAHP as it exists today. Since that time, the FAHP has been continued or renewed through the passage of multi-year authorization acts. Since 1978, Congress has passed highway legislation as part of larger, more comprehensive, multi-year (i.e. four or more years) surface transportation acts. There is no guarantee, however, that reauthorization of the FAHP will occur on a multi-year basis. The current multi-year authorization, the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users” (“SAFETEA-LU”), became law on August 10, 2005 and has been extended until December 31, 2010. See “Lapsing of Authorization – Extension of SAFETEA-LU” below. SAFETEA-LU also extended the imposition of highway-user taxes, generally at the rates imposed by prior federal law, through September 30, 2011. See “SAFETEA-LU” below.

The Federal Highway Administration (“FHWA”) is the federal agency within the U.S. Department of Transportation responsible for administering the FAHP. Title 23, United States Code, entitled “Highways,” includes most of the laws that govern the FAHP arranged systematically or codified. Generally, Title 23 embodies those substantive provisions of highway law that Congress considers to be continuing and which need not be reenacted each time the FAHP is reauthorized. Periodically, sections of Title 23 may be amended or repealed through surface transportation acts.

Although there are other programs administered through FAHP, the major funding for the FAHP is made available in seven major categories: the Interstate Maintenance Program, the Highway Bridge Program, the National Highway System Program, the Surface Transportation Program, the Highway Safety Program, the Congestion Mitigation and Air Quality Program and the Equity Bonus Program. Although FHWA provides funding for eligible highway projects, federal-aid highways are under the administrative control of the state or local government responsible for their operation and maintenance.

The FAHP is financed from the transportation user-related revenues deposited in the Federal Highway Trust Fund (“HTF”). The primary source of revenues in the HTF is derived from the federal excise taxes on motor fuels, including certain alternative fuels. Other taxes include excise taxes on tires, trucks and trailers, and truck use taxes.

The FAHP is a reimbursement program. Once projects are approved by FHWA and funds are obligated, the federal government makes payments to the states for costs as they are incurred on projects, which may include debt service on obligations issued to finance a project. With few exceptions, the federal government does not pay for the entire cost of a federal-aid project. Federal reimbursements are typically to be matched with state and/or local funds. The maximum federal share is specified in the federal legislation authorizing the program. Under current law, most projects have an 80 percent federal share, while Highway Safety Program and Interstate Maintenance Program projects, as well as certain interstate highway construction projects, are funded with a 90 percent federal share.

Funding under the FAHP is provided to states through a multi-step funding cycle that includes: (i) multi-year authorization by Congress of the funding for various highway programs; (ii) apportionment and allocation of funds to the states each federal fiscal year according to statutory formulas or, for some funding categories, through administrative action; (iii) obligation of funds, which is the federal government’s legal commitment (or promise) to pay or reimburse states for the federal share of a project’s eligible costs; (iv) appropriations by Congress specifying the amount of funds available for the year to liquidate obligations; (v) program implementation which covers the programming and authorization phases; and (vi) reimbursement by the federal government of the eligible project costs. Each of these steps is described in more detail under “Federal-Aid Funding Procedures” below.

THE TERMS AND CONDITIONS OF PARTICIPATION IN THE FAHP AS DESCRIBED HEREIN ARE THOSE IN SAFETEA-LU AND ARE SUBJECT TO CHANGE AT THE DISCRETION OF CONGRESS. THERE CAN BE NO ASSURANCE THAT THE LAWS AND REGULATIONS NOW GOVERNING THE FAHP WILL NOT BE CHANGED IN THE FUTURE IN A MANNER THAT MAY ADVERSELY AFFECT THE ABILITY OF THE DEPARTMENT TO RECEIVE FEDERAL AID REVENUES.

### **The Federal Highway Trust Fund**

The HTF provides the primary funding for the FAHP. Funded by a collection of federally-imposed motor vehicle user fees, primarily fuel taxes, the HTF is a fund established by law to hold dedicated highway-user revenues that are used for reimbursement of the state's cost of eligible transportation projects (which may include debt service on obligations issued to finance a federal-aid project), including highway projects. The HTF is composed of two accounts: the Highway Account, which funds highway and intermodal programs, and the Mass Transit Account. The Highway Account receives approximately 84% of gasoline tax revenues and 88% of diesel fuel revenues, with the remaining share of such revenues deposited in the Mass Transit Account and the Leaking Underground Storage Tank Trust Fund. Federal fuel excise taxes are the largest revenue source for the HTF. The majority of these tax revenues, including 15.44 cents per gallon out of the current 18.4 cents per gallon tax, go to the Highway Account.

The following table shows annual HTF collections in the Highway Account for the federal fiscal years 1997 through 2009.

#### **Receipts into the Highway Account of the Federal Highway Trust Fund (In Millions)**

<u>Fiscal Year</u>	<u>Receipts<sup>(1)</sup></u>
2009	\$ 32,171.3
2008	33,511.8
2007	34,287.0
2006	33,672.5
2005	32,907.5
2004	29,785.0
2003	28,961.7
2002	32,602.6
2001	26,915.8
2000	30,347.2
1999	33,821.4
1998	23,140.9
1997	20,509.3

<sup>(1)</sup> Excludes interest earned on balances.

Source: Table FE-210 and Table FE-10, Highway Statistics 2008, Office of Highway Policy Information (as updated through 2009).

The imposition of the taxes that are dedicated to the HTF, as well as the authority to place the taxes in the HTF and to expend moneys from the HTF, all have expiration dates which must be extended periodically. The life of the HTF has been extended several times since its inception. The most recent major legislation to extend the imposition of taxes was in 2005 by SAFETEA-LU, described below. SAFETEA-LU extended the imposition of taxes through September 30, 2011. Federal law regulates not only the imposition of the taxes dedicated to the HTF, but also their deposit into and expenditure from the HTF. SAFETEA-LU authorized the transfer of the taxes to the HTF and expenditures from the HTF for programs through September 30, 2009. On March 18, 2010, the President signed the "Hiring Incentives to Restore Employment Act" (the "HIRE Act") which, among other things, extended the requirements, authorities, conditions, eligibilities, limitations and other provisions, including the transfer of taxes and expenditures from the HTF under SAFETEA-LU, until December 31, 2010. See "Extension of SAFETEA-LU" under the caption "Lapsing of Authorization" below for information relating to recent legislation affecting the HTF.

The HTF is required under current federal law to maintain a positive balance to ensure that prior commitments for distribution of federal revenues can be met.

## **SAFETEA-LU**

SAFETEA-LU was signed into law by the President on August 10, 2005 and authorizes a total of \$244.1 billion guaranteed for highways, highway safety and public transportation programs in federal fiscal years 2004 through 2009. This represented a 38% increase in authorization over the Transportation Equity Act for the 21st Century (“TEA-21”). The federal-aid highway obligation limitations are set at these levels: \$34.4 billion in federal fiscal year 2005, \$36.0 billion in federal fiscal year 2006, \$38.2 billion in federal fiscal year 2007, \$39.6 billion in federal fiscal year 2008 and \$41.2 billion in federal fiscal year 2009. SAFETEA-LU retains the firewall and minimum guarantee provisions of TEA-21, increasing each state’s minimum rate of return of HTF contributions from 90.5% in federal fiscal years 2005 and 2006 and gradually increasing to 92% by federal fiscal year 2008 and remaining at 92% for fiscal year 2009. In any given year, no state is to receive less than a specified percentage (117% in federal fiscal year 2005 to 121% in federal fiscal year 2009) of its average annual apportionments and High Priority Projects under TEA-21.

Guaranteed Highway Programs funds represent the highway construction and planning funds that provide the 90.5% guaranteed return to the states that was assured under TEA-21 and continued under SAFETEA-LU. Guaranteed Highway Program funds are the most significant source of federal transportation funding received by the states. On average, the State has received approximately 91% of its federal transportation funds since 1998 through the Guaranteed Highway Programs.

Discretionary Highway Programs funds are generally awarded or allocated to states on a competitive basis. However, in recent years the Congress has earmarked most discretionary funds in annual appropriations bills for specific projects. Discretionary Highway Programs funds include various federal transportation programs including, among others, the following categories: National Corridor Infrastructure Improvement; Construction of Ferry Boats and Ferry Terminal Facilities; Innovative Bridge Research and Construction; Intelligent Transportation Systems Development; Transportation, Community, and System Preservation; Public Lands Highways Discretionary; National Scenic Byways, Discretionary Interstate Maintenance; Projects of National and Regional Significance; and Transportation Infrastructure Finance and Innovation Act programs.

Highway Safety Programs funds are made available to states by a variety of methods, including apportionment and allocation based on competitive selection or satisfaction of performance based criteria for incentive grants. The various programs that comprise the Highway Safety Programs include, among others, State and Community Highway Safety Grants, Seat Belt Incentive Grants, and Safety Incentives to Prevent Operation of Motor Vehicles by Intoxicated Persons.

The Federal Transit Administration provides financial assistance to develop new transit systems and improve, maintain, and operate existing systems. The bulk of available federal transit funds is received directly by urban areas rather than by the states. Federal Transit Program funds are additional federal transit funds that are made available to the states by both apportionment through statutory formulas and allocation on a discretionary basis. The various programs that comprise the Transit Programs include, among others, Nonurbanized Area Formula Grants, Capital Investment Program, Formula Grants for Special Needs of Elderly and Persons with Disabilities, Metropolitan Planning, Job Access and Reverse Commute, New Freedom Program, and State Planning and Research.

A limitation on obligations and the process for distribution is included for each of the years in SAFETEA-LU. Through the limitation on obligations, Congress controls the program, making it more responsive to prevailing budget and economic policy each year. The obligation ceilings set in SAFETEA-LU for federal fiscal years 2005 through 2009 were based on a guaranteed level of spending for transportation through the Equity Bonus Program, discussed below. SAFETEA-LU contains provisions which attempt to maintain funding levels for transportation through reduced incentives to divert such funds to other uses (i.e., reductions in highway or transit spending as a result of federal deficit reduction legislation will not allow increased spending in other non-transportation programs) as further discussed below. Unlike TEA-21 where approximately 10% of its authorizations were unprotected and

part of the general discretionary budget category available to Congress in the annual appropriations process, SAFETEA-LU protects its entire \$244.1 billion multi-year authorizations.

### ***Protected Funding***

SAFETEA-LU extends the practice (established in TEA-21) of establishing separate budget categories for highway and transit discretionary spending and establishing budgetary “firewalls” between highway and transit discretionary spending and all other domestic discretionary programs. Prior to TEA-21, the highway and transit discretionary programs competed for annual budgetary resources with other domestic programs. Currently, both programs are still subject to budget constraints, but reductions in highway or transit spending can only be used for deficit reduction and cannot be used to increase spending in other non-transportation programs. This removes a principal incentive for Congress to limit highway or transit spending in the budget/appropriation process.

The highway firewall “protects” the obligation limitations for highways and highway safety programs. The firewall amount for highways is tied to the projected receipts of the Highway Account of the HTF and beginning with federal fiscal year 2007 will be adjusted each year during development of the President’s budget as new receipt projections and actual receipts became available. When the firewall is adjusted, equal adjustment will be made to authorizations called Revenue Aligned Budget Authority and to highway obligation limits. To smooth out the effects of any adjustment, the adjustment will be split over two years

Under SAFETEA-LU, a total of \$244.1 billion in funding for surface transportation is guaranteed to be available for obligation. The total protected amount available for highways and highway safety under SAFETEA-LU is \$198.8 billion. The protected amount available for highways had two components: the amount behind the budgetary firewall of \$195.9 billion and the amount of \$3.7 billion for programs exempt from the obligation limitation. The protected funding for transit programs has a single component - the firewall amount of \$45.3 billion that was not tied to HTF receipts.

### ***Highway Minimum Funding - Equity Bonus Program***

Federal-aid highway funds for individual programs are apportioned by formula using factors relevant to the particular program. After those computations are made, additional funds are distributed to ensure that each state receives an amount based on equity considerations. In SAFETEA-LU, this provision is called the Equity Bonus (replaces TEA-21’s Minimum Guarantee) and ensures that each state will be guaranteed a minimum rate of return on its share of contributions to the Highway Account of the HTF, and a minimum increase relative to the average dollar amount of apportionments under TEA-21, and that certain states will maintain the share of total apportionments they each received during TEA-21. An open-ended authorization is provided, ensuring that there will be sufficient funds to meet the objectives of the Equity Bonus.

Each state’s share of apportionments from the Interstate Maintenance Program, the National Highway System Program, the Highway Bridge Program, the Surface Transportation Program, the Highway Safety Improvement Program, the Congestion Mitigation and Air Quality Improvement Program, the Highway Safety Improvement Program, the Coordinated Border Infrastructure Program and several smaller programs, the Equity Bonus program itself, along with certain high priority projects, will be at least a specified percentage of that state’s share of contributions to the Highway Account of the HTF. The specified percentage, referred to as a *relative rate of return*, is 90.5% for federal fiscal years 2005 and 2006, 91.5% for Federal Fiscal Year 2007, and 92% for federal fiscal years 2008 and 2009.

States with certain characteristics (e.g., low population density or total population, low median household income, high interstate fatality rate, high indexed state motor fuel rate) are guaranteed a share of apportionments and high priority projects not less than the state’s average annual share under TEA-21. In any given year, no state is to receive less than a specified percentage (117% for federal fiscal year 2005, 118% for federal fiscal year 2006, 119% for federal fiscal year 2007, 120% for federal fiscal year 2008, and 121% for federal fiscal year 2009) of its average annual apportionments and high priority projects under TEA-21.

See “Lapsing of Authorization” below for a discussion of recent legislation extending SAFETEA-LU through December 31, 2010.

## **Federal Aid Funding Procedures**

The FAHP continues to enable the construction of an extensive national transportation system through reimbursement of a large percentage of state expenditures for approved highway projects. The financial assurance provided by the FAHP is unusual among federal programs in that: (i) the FAHP is funded by dedicated revenues, from a user-tax source, deposited in a special trust fund, i.e., HTF; (ii) the contract authority of the FHWA is established by a multi-year authorization act rather than through annual appropriation acts; and (iii) contract authority is not subject to the annual appropriations process (as budget authority is in most other federal programs), although an appropriations act is required in order to liquidate obligations.

The following summarizes the major steps in funding the Federal-Aid Highway Program.

### ***Authorization***

The first and most important step in financing the FAHP is the development and enactment of authorizing legislation. The authorization act not only shapes and defines programs, but also sets upper limits (authorizations) on the funding for programs and includes provisions related to the operation of the HTF.

Once Congress has established authorizations, the next step involves how funds are made available to states. Typically, federal programs operate using appropriated budget authority which means that funds, although authorized, are not available until passage of an appropriations act. However, most programs within the FAHP do not require this two-step process. Through what is termed “contract authority” (a special type of budget authority), authorized amounts become available for obligation according to the provisions of the authorization act without further legislative action. For the FAHP, funds authorized for a federal fiscal year are available for distribution through apportionments or allocations. The use of contract authority gives the states advance notice of the level of federal funding at the time an authorization act is enacted, eliminating much of the uncertainty associated with the authorization-appropriation sequence.

The existence of dedicated revenues in the HTF and of multi-year contract authorizations are designed to provide a predictable and uninterrupted flow of reimbursements to the states. The risk of contract authority lapsing between authorizing acts is minimal, since sufficient unobligated balances generally exist that can be used by the states, with the approval of Congress, to cover gaps in funding between multi-year reauthorization acts. See “Lapsing of Authorization” below.

### ***Apportionment, Allocations and Rescissions***

For most components of the FAHP, the authorization act sets the distribution of contract authority to be apportioned and/or allocated to the states. The authorized amount for a given federal fiscal year is distributed to the states through apportionments and allocations.

(a) Apportionments. The distribution of funds using a formula provided in law is called an apportionment. Most federal-aid funds are distributed to states through apportionments. Each federal fiscal year, the FHWA has responsibility for apportioning authorized funding for the various highway programs among the states according to formulas established in the authorizing statute. Apportionment factors include items such as lane miles, vehicle miles traveled, taxes paid into the HTF and diesel fuel usage. Each highway program has a unique set of factors that determine the apportionments to the states. Annual apportionments are generally made on the first day of the federal fiscal year.

(b) Allocations. Some categories do not have a legislatively mandated distribution formula. When there are no formulas in law, the distributions of funds are termed “allocations” which may be made at any time during the federal fiscal year. In most cases, allocated funds are divided among states with qualifying projects applying general administrative criteria provided in the law.

Federal-aid highway apportionments are available to states for use for more than one year. Their availability does not terminate at the end of the federal fiscal year, as is the case with most other federal programs. In general, apportionments are available for three years plus the year that they are apportioned. Consequently, when new apportionments or allocations are made, the amounts are added to a state's carryover apportionments from the previous year. Should a state fail to obligate a year's apportionment within the period of availability specified for a given program (usually a total of four years), the authority to obligate any remaining amount lapses.

(c) Rescissions. A federal rescission of funds reduces the amount of federal funds provided by an appropriations or authorization act that has already become law. Similar to an appropriation or authorization act, a rescission must be passed by both chambers of the U.S. Congress and signed into law by the President. In most instances, a rescission is used to provide funding for a new or emergency legislative priority without increasing federal spending government-wide or by a particular agency. Another common scenario is to accommodate for budget shortfalls caused by federal revenue predictions that are discovered to be too high after a spending bill is passed into law. Rescissions are generally targeted at unobligated apportionments. In federal fiscal year 2006, a rescission totaling \$1,999,999,000 nationwide was mandated by the Transportation, Treasury, HUD Appropriations Act of 2006 which was signed into law November 30, 2005. Texas's share of this amount was \$158,707,654. The Defense Appropriation Act of 2006, signed into law December 30, 2005, mandated a \$1,143,000,000 rescission nationwide. Texas's share was \$90,670,526. The third rescission for federal fiscal year 2006 was the Emergency Supplemental Appropriations Act of 2006, signed into law June 15, 2006, mandating an additional \$702,362,500 rescission nationwide, of which Texas's share was \$55,716,165. In federal fiscal year 2007, there were two transportation rescissions enacted. The 2007 Continuing Resolution, signed into law February 15, 2007, mandated a \$3,471,582,000 rescission nationwide and the US Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, signed into law May 25, 2007, mandated an additional \$871,022,000 rescission nationwide. Of these, Texas's share was \$288,459,698 and \$72,374,710 respectively.

The Energy Independence Security Act of 2007 ("EISA"), signed into law on December 18, 2007, provided instructions as to how rescissions should be implemented in 2008 and 2009 and limited the programs subject to be rescinded to those apportioned under Chapter 1 of Title 23. Prior to EISA, States had discretion as to which program funds could be used to cover the amounts being rescinded from their State; EISA provided specific instructions as to what program funds were subject to rescission and how the amount to be rescinded for fiscal years 2008 and 2009 were to be spread among those programs. In fiscal year 2008, the Consolidated Appropriations Act of 2008, signed into law on December 26, rescinded approximately \$3.15 billion from unobligated apportioned funds of which Texas's share was \$257,989,173. There were two rescissions in fiscal year 2009. The first was the result of a combination of acts including EISA, the Pension Protection Act of 2006, signed into law on August 17, 2006, and the SAFETEA-LU Technical Corrections Act of 2008, signed into law on June 6, 2008, and rescinded \$8,705,000,000 of unobligated balances nationwide on September 30, 2009; the impact on Texas was \$728,707,560. This rescission was subsequently restored by the HIRE Act in 2010 as discussed below. The second fiscal year 2009 rescission was the result of Division I, Title I of the Omnibus Appropriations Act, 2009, which was signed into law March 11, 2009, and mandated a second rescission of \$3.15 billion of unobligated federal-aid highway funds apportioned to states; the impact on Texas was \$272,403,085.

### ***Obligation***

Obligation is the commitment (or promise) of the federal government to pay, through reimbursement to a state, the federal share of an approved project's eligible costs, which may include debt service on obligations issued to finance a project. This process is important to the states because it allows states to award contracts with assurance that the federal government will reimburse its share of incurred costs. Once an obligation is made, the federal government is to reimburse the states when bills or payments become due. However, Congress places a restriction or "ceiling" on the amount of federal assistance that may be promised (obligated) during a specified time period. The obligation limitation is the amount of authorized funding that Congress allows states to obligate in an individual year. This is a statutory budgetary control that does not affect the apportionment or allocation of funds. Rather, it controls the rate at which these funds can be used.

Once Congress establishes an overall obligation limitation and after deducting amounts for certain exempt programs and various set-aside<sup>1</sup>, FHWA distributes obligation authority (“OA”) to states proportionately based on each state’s share of apportioned and allocated revenues. The actual ratio of OA to apportionment and allocations may vary from state to state, since some federal-aid programs are exempt from the obligation limitation. During the federal fiscal year, states submit requests to FHWA to obligate funds, representing the federal share of specific projects. As a state obligates funds, its balance of OA is reduced. A state’s OA (unlike its apportionments and allocations of authorized funding) must be used before the end of the federal fiscal year for which it is made available; if not, it will be distributed to other states to ensure that the total limitation nationwide will be used. A state may receive additional OA through a redistribution process each year in August which reallocates OA from states or programs unable to fully obligate their share to other states that are able to obligate more than their initial share.

Although a ceiling on obligations restricts how much funding may be used in a federal fiscal year, the state has flexibility within the overall limitation to mix and match the type of program funds it obligates, based on its individual needs, as long as it does not exceed the ceiling in total. Also, the unobligated balance of apportionments or allocations that the state has remaining at the end of any federal fiscal year is carried over for use by that state during the next federal fiscal year.

### ***Highway Program Implementation***

In order to receive federal reimbursements for transportation projects, states are required to develop long-range transportation plans that are based on realistic projections of state and federal funding. Projects are not eligible for federal reimbursements unless they are either directly identified in a long-range plan or consistent with policies and objectives identified in long-range plans and are included in the three-year Statewide Transportation Improvement Program (“STIP”) which lists all projects proposed for financing in that three-year period. The STIP requires FHWA approval.

States are required to follow federal fiscal management procedures as they implement projects that are included in the STIP. These fiscal management processes ensure that the process is managed efficiently from project authorization to actual payment of FHWA reimbursements to the state. Further, states are required to use a detailed accounting system to track project expenditures and reimbursements. In addition, a federal system tracks payments to states.

States may request FHWA approval for eligible projects either through the traditional process or through the advance construction procedure as discussed below:

(a) Traditional Approach. Under the traditional highway funding approach, a state obligates the full federal share of the funding for a project at the beginning of the project, concurrent with project authorization. The first step in the fiscal management process begins when a state requests authorization to use federal funds on a project. The project sponsor submits plans, specifications and estimates (“PS&E’s”) for a project to the FHWA Division Office, and requests that the FHWA approve the use of federal funding for the appropriate federal share of the project. The project must be in the STIP and PS&Es must identify the category of federal funding that will be used.

FHWA evaluates the PS&Es to ensure that the project is eligible for federal funding and meets a variety of federal requirements. Provided that all requirements are satisfied, FHWA authorizes federal participation on the project, and obligates the federal share of project costs. By obligating the funds, the FHWA makes a commitment to reimburse the state for the federal share of eligible project costs. It sets aside the appropriate amount of the state’s OA, and also sets aside an equivalent amount of apportionments by program. Accordingly, the state must have sufficient OA to cover the level of federal participation it is requesting.

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<sup>1</sup> Unlike TEA-21 and previous multi-year highway authorizations, SAFETEA-LU provides a separate authorization for the administration costs of FAHP, not as a takedown from the various apportionment programs.

Once authorization for a project has been obtained, the state advertises the project and receives bids. The state awards the contract to the lowest responsive bidder and submits a request to FHWA asking for any necessary adjustments to federal obligations to reflect the actual bid amount. If approved, the amounts agreed to are included in a project agreement which identifies the funds that will be encumbered by the state, and the amount that will be reimbursed by the federal government.

(b) Advance Construction Approach. In recent years, FHWA has implemented several new fiscal management techniques that provide states additional flexibility in managing their OA and cash flow. Advance construction (“AC”) and partial conversion of advance construction are two key techniques that facilitate federal-aid project funding.

The AC approach for authorizing projects allows states to finance projects that are eligible for federal aid without obligating the full federal share of costs at the beginning of the project. This allows states to begin a project before accumulating all of the OA needed to cover the federal share of the project. Similar to the traditional approach, the state submits PS&E’s to FHWA and requests project authorization. Under AC, however, FHWA is asked to authorize the project without obligating federal funds. The state will provide the up-front financing for the project and then at a later date “convert” the advance construction project to a regular federal-aid project and obligate the full federal share of the project costs, when sufficient OA is available. At the time of conversion, the state can be reimbursed for the federal share of costs incurred up to the point of conversion.

Partial conversion of AC is a form of advance construction in which the state converts, obligates, and receives reimbursement for only a portion of its funding of an AC project in a given year. This removes any requirement to wait until the full amount of OA for the project is available. The state can therefore obligate varying amounts for the project’s eligible cost in each year, depending on how much of the state’s OA is available. Using the technique to partially convert the federal share makes bond and note financing more viable and federal-aid funds available to support a greater number of projects. The National Highway System Act of 1995 provided additional flexibility in the use of advance construction by allowing partial conversion of advance construction as implemented through a Federal Register Notice dated July 19, 1995.

### ***Reimbursement***

As work progresses on a federal-aid highway project, a state will pay the contractor for completed work from available state funds. The state electronically transmits vouchers for the federal share of completed work and the FHWA certifying officer certifies the claims for payment. After review and approval by the FHWA Division office, payment is scheduled. The timing of the federal payment to the state is governed by an agreement between the state and the United States Treasury. The FHWA’s payments are generally deposited in the state’s account on the same day payments to the contractor are made.

### **Lapsing of Authorization**

All federal programs must be authorized through enacted legislation that defines the programs and establishes maximum funding levels, and for most programs annual appropriations acts are necessary in order to create budget authority. Indeed, for most federal domestic discretionary programs, a lapsed authorization may have little or no effect on a program, so long as revenues are appropriated. For the FAHP, the consequences of lapsed authorization caused when Congress fails to enact reauthorization legislation are somewhat different. While Congress may pass interim legislation, the existence of contract authority and a dedicated revenue stream means that the FHWA usually can continue to provide OA by administrative action.

Though recent federal surface transportation legislation has been authorized for four to six years at a time, there occasionally have been periods in which the previous authorizing legislation had expired and the future legislation had yet to be enacted. In such circumstances, Congress and/or the FHWA have found ways to avoid disruptions to state highway programs and, more importantly, have been able to maintain the flow of federal revenues to states in each instance. Two mechanisms in particular have kept revenues flowing:

- Short-Term Authorization: TEA-21 expired on September 30, 2003 and Congress enacted nine interim authorization measures for varying periods over twenty-two months until the enactment of SAFETEA-LU on August 10, 2005. Additionally, since most states have unobligated balances of at least half their normal annual OA levels and an authorization act need not be in place for the FHWA to give states new OA, states were able to spend down prior unfunded federal apportionments (contract authority) with newly allocated OA. The lack of an enacted authorization act during this period did not pose a threat to the continued flow of revenues, because dedicated highway user fees continued to flow into the HTF. Similarly, the Intermodal Surface Transportation Efficiency Act of 1991 (“ISTEA”) expired on September 30, 1997 and until approval of TEA-21 on June 9, 1998, no new long-term authorization legislation was enacted. Despite the lack of long-term authorizing legislation, states were provided an upper limit on OA through passage of an appropriations act plus access to their unobligated balances. On November 13, 1997, Congress passed the Surface Transportation Extension Act of 1997 (“STEA”), which provided a six-month authorization for highway funding and established a limit on the amount of new OA states could use at funding levels equal to about a quarter of federal fiscal year 1997 authorization levels.
- Access to Unobligated Balances: The 1987 Surface Transportation and Uniform Relocation Assistance Act expired on September 30, 1991 and ISTEA was not enacted until December 18, 1991. The FHWA was able to act administratively to keep federal-aid funding flowing because states could use their unobligated balances to provide contract authority to use new OA.
- Extension of SAFETEA-LU. On September 30, 2009, the authorization under SAFETEA-LU for federal highway and transit programs expired, but President Obama signed a 31-day extension on October 1, 2009 and later, on October 30, 2009, signed H.R. 2996, the Department of the Interior, Environment, and Related Agencies Appropriations Act, that extended authorization to make expenditures from the Highway Trust Fund under SAFETEA-LU until December 18, 2009. SAFETEA-LU was then extended again through February 28, 2010 by H.R. 3326, the Department of Defense Appropriations Act, which was signed into law on December 19, 2009. Most recently, H.R. 2847, the Hiring Incentives to Restore Employment Act (the “HIRE Act”), which was signed into law on March 18, 2010, extended the requirements, authorities, conditions, eligibilities, limitations and other provisions under SAFETEA-LU until December 31, 2010. The HIRE Act also authorizes HTF appropriations for fiscal year 2010 and October 1 through December 31, 2010 (first quarter of fiscal year 2011), for the federal-aid highway, surface transportation research, and transportation planning programs under SAFETEA-LU, with a limit on obligational authority for the programs equal to the total authorized for such programs for fiscal year 2009. Additionally, the HIRE Act provides for the deposit of \$19.5 billion into the HTF to reimburse the trust fund and it is projected that such deposit will ensure the solvency of the HTF through next year. The HIRE Act also restores the fiscal year 2009 rescission of \$8.7 billion of contract authority; however, the HIRE Act does not provide additional funding beyond what was previously enacted under SAFETEA-LU. Congress now has until December 31, 2010 to pass another extension or pass a multi-year surface transportation reauthorization bill.

ALTHOUGH THESE MEASURES HAVE BEEN ENACTED BY CONGRESS AND/OR FHWA IN THE PAST, NO ASSURANCE CAN BE GIVEN THAT SUCH MEASURES WOULD OR COULD BE ENACTED IN THE FUTURE TO MAINTAIN THE FLOW OF FEDERAL-AID FUNDING UPON TERMINATION OF AN AUTHORIZATION PERIOD.

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**Appendix D**

**Form of Opinion of Bond Counsel**

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August 5, 2010

WE HAVE ACTED AS BOND COUNSEL to the Texas Transportation Commission (the “Commission”), the governing body of the Texas Department of Transportation (the “Department”), in connection with an issue of bonds (the “Bonds”) described as follows:

TEXAS TRANSPORTATION COMMISSION STATE HIGHWAY FUND FIRST TIER REVENUE BONDS, TAXABLE SERIES 2010 (BUILD AMERICA BONDS – DIRECT PAYMENT), in the aggregate principal amount of \$1,500,000,000, maturing on April 1 in the years 2026 and 2030. The Bonds are issuable in fully registered form only, in denominations of \$5,000 or integral multiples thereof, bearing interest, subject to redemption prior to maturity, and subject to transfer and exchange as set forth in the Bonds and in the Second Amended and Restated Master Resolution Establishing a Financing Program for Bonds, Other Public Securities and Credit Agreements Secured by and Payable from Revenue Deposited to the Credit of the State Highway Fund (the “Master Resolution”), as supplemented by the Fifth Supplemental Resolution to the Master Resolution, adopted by Minute Order of the Commission on February 25, 2010 (the “Fifth Supplemental Resolution”), and the Award Certificate of Department Representative dated as of July 27, 2010 (the “Award Certificate” and, together with the Master Resolution and the Fifth Supplemental Resolution, the “Resolution”), authorizing the issuance of the Bonds.

WE HAVE ACTED as Bond Counsel for the sole purpose of rendering an opinion with respect to the legality and validity of the Bonds under the Constitution and laws of the State of Texas and with respect to the exclusion of interest on the Bonds from gross income under federal income tax law. In such capacity we have examined the Constitution and laws of the State of Texas; federal income tax law; and a transcript of certain certified proceedings pertaining to the issuance of the Bonds. The transcript contains certified copies of certain proceedings of the Commission; certain certifications and representations and other material facts within the knowledge and control of the Commission and the Department, upon which we rely; and certain other customary documents and instruments authorizing and relating to the issuance of the Bonds. We have also examined executed Bond No. R-1.

WE HAVE NOT BEEN REQUESTED to examine, and have not investigated or verified, any original proceedings, records, data or other material, but have relied upon the transcript of certified proceedings. We have not assumed any responsibility with respect to the financial condition or capabilities of the Commission or the disclosure thereof in connection with the sale of the Bonds. Our role in connection with the Commission’s Official Statement prepared for use in connection with the sale of the Bonds has been limited as described therein. Capitalized terms used herein and not otherwise defined have the meaning assigned in the Resolution.

BASED ON SUCH EXAMINATION, it is our opinion as follows:

- (1) The transcript of certified proceedings evidences complete legal authority for the issuance of the Bonds in full compliance with the Constitution and laws of the State of Texas presently in effect; the issuance, execution and delivery of the Bonds is permitted under the Resolution; and the Bonds and the Resolution have been duly authorized, executed and delivered in accordance with law;
- (2) The covenants and agreements in the Resolution constitute valid and legally binding obligations of the Commission, and the Bonds constitute valid, binding and enforceable limited obligations of the Commission, except to the extent that the rights and remedies of the owners of the Bonds may be limited by laws heretofore or hereafter enacted relating to bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors of political subdivisions and governmental agencies and the exercise of judicial discretion in appropriate cases; and
- (3) The Bonds are First Tier Senior Obligations secured by and payable solely from a first lien on the Pledged Revenues described in the Resolution.

THE COMMISSION HAS RESERVED THE RIGHT in the Master Resolution, and the Master Resolution permits the Commission, to issue or incur from time to time other series and installments of First Tier Senior Obligations which are equally and ratably secured, on parity with the Bonds, by a first lien on and pledge of the Pledged Revenues. The Commission also has reserved the right to issue or incur additional Senior Obligations, and to establish additional Tiers for the payment thereof, which are secured by a pledge of and lien on the Pledged Revenues that is junior and subordinate to the lien of the Master Resolution with respect to First Tier Senior Obligations (including the Bonds). In addition, the Resolution recognizes and reserves to the Commission the right to issue or incur Subordinate Obligations which may be payable from or secured by a lien on State Highway Fund Revenues that is junior and subordinate to the lien of the Master Resolution with respect to First Tier Senior Obligations and Senior Obligations of any additional Tiers established hereafter.

WE EXPRESS NO OPINION as to the treatment of the interest on the Bonds for federal income tax purposes or any other matter.

OUR OPINIONS ARE BASED ON EXISTING LAW, which is subject to change. Such opinions are further based on our knowledge of facts as of the date hereof. We assume no duty to update or supplement our opinions to reflect any facts or circumstances that may thereafter come to our attention or to reflect any changes in any law that may thereafter occur or become effective.

## **Appendix E**

### **Description of Book-Entry-Only System and Global Clearance Procedures**

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## APPENDIX E

### BOOK-ENTRY ONLY SYSTEM AND GLOBAL CLEARANCE PROCEDURES

*The information in this section concerning DTC, DTC's book-entry system and the global clearance procedures of Clearstream Banking, société anonyme, Luxembourg ("Clearstream Banking"), and the Euroclear Bank S.A./N.V. as operator of the Euroclear System ("Euroclear"), has been obtained from sources that the Commission believes to be reliable, but the Commission takes no responsibility for the accuracy or completeness thereof. The Commission cannot and does not give any assurances that DTC, DTC Direct Participants or Indirect Participants will distribute to the Beneficial Owners (a) payments of interest, principal or premium, if any, with respect to the Bonds, (b) Bonds representing ownership interest in or other confirmation or ownership interest in the Bonds, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Bonds, or that they will so do on a timely basis or that DTC, DTC Direct Participants or DTC Indirect Participants will act in the manner described in this Official Statement. The current "Rules" applicable to DTC are on file with the Securities and Exchange Commission and the current "Procedure" of DTC to be followed in dealing with DTC Participants are on file with DTC.*

#### **Book-Entry Only System**

The Depository Trust Company ("DTC"), New York, NY, will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond certificate for each maturity will be issued for the aggregate principal amount of each maturity of the Bonds, and will be deposited with DTC.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has Standard & Poor's highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized

representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Bonds are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Commission as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Payments on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Commission or the Paying Agent/Registrar, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Paying Agent/Registrar, or the Commission, subject to any statutory or regulatory requirements as may be in effect from time to time. Payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of Commission or the Paying Agent/Registrar, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to the Commission or the Paying Agent/Registrar. Under such circumstances, in the event that a successor depository is not obtained, Bond certificates are required to be printed and delivered.

To the extent permitted by law, the Commission may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Bond certificates will be printed and delivered to DTC.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Commission believes to be reliable, but the Commission takes no responsibility for the accuracy thereof.

## **Global Clearance Procedures**

**Clearstream Banking and Euroclear.** The Bonds sold in offshore transactions will be initially issued to investors through the book-entry facilities of DTC, or Clearstream Banking and Euroclear in Europe if the investors are participants in those systems, or indirectly through organizations that are participants in the systems. For any of such Bonds, the record holder will be DTC's nominee. Clearstream Banking and Euroclear will hold omnibus positions on behalf of their participants through customers' securities accounts in Clearstream Banking's and Euroclear's names on the books of their respective depositories.

The depositories, in turn, will hold positions in customers' securities accounts in the depositories' names on the books of DTC. Because of time zone differences, the securities account of a Clearstream Banking or Euroclear participant as a result of a transaction with a participant, other than a depository holding on behalf of Clearstream Banking or Euroclear, will be credited during the securities settlement processing day, which must be a business day for Clearstream Banking or Euroclear, as the case may be, immediately following the DTC settlement date. These credits or any transactions in the securities settled during the processing will be reported to the relevant Euroclear participant or Clearstream Banking participant on that business day. Cash received in Clearstream Banking or Euroclear as a result of sales of securities by or through a Clearstream Banking participant or Euroclear participant to a DTC Participant, other than the depository for Clearstream Banking or Euroclear, will be received with value on the DTC settlement date, but will be available in the relevant Clearstream Banking or Euroclear cash account only as of the business day following settlement in DTC.

Transfers between participants will occur in accordance with DTC rules. Transfers between Clearstream Banking participants or Euroclear participants will occur in accordance with their respective rules and operating procedures. Cross-market transfers between persons holding directly or indirectly through DTC, on the one hand, and directly or indirectly through Clearstream Banking participants or Euroclear participants, on the other, will be effected in DTC in accordance with DTC rules on behalf of the relevant European international clearing system by the relevant depositories; however, cross-market transactions will require delivery of instructions to the relevant European international clearing system by the counterparty in the system in accordance with its rules and procedures and within its established deadlines in European time. The relevant European international clearing system will, if the transaction meets its settlement requirements, deliver instructions to its depository to take action to effect final settlement on its behalf by delivering or receiving securities in DTC, and making or receiving payment in accordance with normal procedures for same day funds settlement applicable to DTC. Clearstream Banking participants or Euroclear participants may not deliver instructions directly to the depositories.

Clearstream Banking is incorporated under the laws of Luxembourg as a professional depository. Clearstream Banking holds securities for its participating organizations ("Clearstream Banking Participants") and facilitates the clearance and settlement of securities transactions between Clearstream Banking Participants through electronic book-entry changes in accounts of Clearstream Banking Participants, thereby eliminating the need for physical movement of certificates. Clearstream Banking provides to its Clearstream Banking Participants, among other things, services for safekeeping, administration, clearance and settlement of internationally traded securities and securities lending and borrowing. Clearstream Banking interfaces with domestic markets in several countries. As a professional depository, Clearstream Banking is subject to regulation by the Luxembourg Monetary Institute. Clearstream Banking Participants are recognized financial institutions around the world, including underwriters, securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. Indirect access to Clearstream Banking is also available to others, such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a Clearstream Banking Participant, either directly or indirectly.

Euroclear was created to hold securities for participants of the Euroclear system ("Euroclear Participants") and to clear and settle transactions between Euroclear Participants through simultaneous electronic book-entry delivery against payment, thereby eliminating the need for physical movement of certificates and any risk from lack of simultaneous transfers of securities and cash. The Euroclear system includes various other services, including securities lending and borrowing and interfaces with domestic markets in several countries generally similar to the arrangements for cross-market transfers with DTC described above. Euroclear is operated by Euroclear Bank S.A./N.V. (the "Euroclear Operator"), under contract with Euroclear Clearance System, S.C., a Belgian cooperative corporation (the "Cooperative"). All operations are conducted by the Euroclear Operator, and all Euroclear securities clearance accounts and Euroclear cash accounts are accounts with the Euroclear Operator, not the Cooperative. The Cooperative establishes policy for the Euroclear system on behalf of Euroclear Participants. Euroclear Participants include banks (including central banks, securities brokers and dealers and other professional financial intermediaries). Indirect access to the Euroclear system is also available to other firms that clear through or maintain a custodial relationship with a Euroclear Participant, either directly or indirectly.

The Euroclear Operator is the Belgian branch of a New York banking corporation which is a member bank of the Federal Reserve System. As such, it is regulated and examined by the Board of Governors of the Federal Reserve System and the New York State Banking Department, as well as the Belgian Banking Commission. Securities clearance accounts and cash accounts with the Euroclear Operator are governed by the Terms and Conditions Governing Use of Euroclear and the related Operating Procedures of the Euroclear Systems and

applicable Belgian law (collectively, the “Terms and Conditions”). The Terms and Conditions govern transfers of securities and cash within the Euroclear system, withdrawal of securities and cash from the Euroclear system, and receipts of payments with respect to securities in the Euroclear system. All securities in the Euroclear system are held on a fungible basis without attribution of specific certificates to specific securities clearance accounts. The Euroclear Operator acts under the Terms and Conditions only on behalf of Euroclear Participants and has no record of or relationship with persons holding through Euroclear Participants.

THE COMMISSION CANNOT AND DOES NOT GIVE ANY ASSURANCES THAT DTC, DIRECT PARTICIPANTS OR INDIRECT PARTICIPANTS OF DTC, CLEARSTREAM BANKING, CLEARSTREAM BANKING PARTICIPANTS, EUROCLEAR OR EUROCLEAR PARTICIPANTS WILL DISTRIBUTE TO THE BENEFICIAL OWNERS OF THE BONDS (I) PAYMENTS OF PRINCIPAL OF OR INTEREST ON THE BONDS (II) CONFIRMATIONS OF THEIR OWNERSHIP INTERESTS IN THE BONDS OR (III) OTHER NOTICES SENT TO DTC OR CEDE & CO., ITS PARTNERSHIP NOMINEE, AS THE REGISTERED OWNER OF THE BONDS, OR THAT THEY WILL DO SO ON A TIMELY BASIS, OR THAT DTC, DIRECT PARTICIPANTS OR INDIRECT PARTICIPANTS, CLEARSTREAM BANKING, CLEARSTREAM BANKING PARTICIPANTS, EUROCLEAR OR EUROCLEAR PARTICIPANTS WILL SERVE AND ACT IN THE MANNER DESCRIBED IN THIS OFFICIAL STATEMENT.

THE COMMISSION DOES NOT HAVE ANY RESPONSIBILITY OR OBLIGATIONS TO DTC, THE DIRECT PARTICIPANTS, THE INDIRECT PARTICIPANTS OF DTC, CLEARSTREAM BANKING, CLEARSTREAM BANKING PARTICIPANTS, EUROCLEAR, EUROCLEAR PARTICIPANTS OR THE BENEFICIAL OWNERS WITH RESPECT TO (1) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC OR ANY DIRECT PARTICIPANTS OR INDIRECT PARTICIPANTS OF DTC, CLEARSTREAM BANKING, CLEARSTREAM BANKING PARTICIPANTS, EUROCLEAR OR EUROCLEAR PARTICIPANTS; (2) THE PAYMENT BY DTC OR ANY DIRECT PARTICIPANTS OR INDIRECT PARTICIPANTS OF DTC, CLEARSTREAM BANKING, CLEARSTREAM BANKING PARTICIPANTS, EUROCLEAR OR EUROCLEAR PARTICIPANTS OF ANY AMOUNT DUE TO ANY BENEFICIAL OWNER IN RESPECT OF THE PRINCIPAL AMOUNT OF OR INTEREST ON BONDS; (3) THE DELIVERY BY DTC OR ANY DIRECT PARTICIPANTS OR INDIRECT PARTICIPANTS OF DTC, CLEARSTREAM BANKING, CLEARSTREAM BANKING PARTICIPANTS, EUROCLEAR OR EUROCLEAR PARTICIPANTS OF ANY NOTICE TO ANY BENEFICIAL OWNER THAT IS REQUIRED OR PERMITTED TO BE GIVEN TO OWNERS UNDER THE TERMS OF THE RESOLUTION; OR (4) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS OWNER OF THE BONDS.

#### **Initial Settlement; Distributions; Actions Upon Behalf of Owners**

All of the Bonds will initially be registered in the name of Cede & Co., the nominee of DTC. Clearstream Banking and Euroclear may hold omnibus positions on behalf of their participants through customers’ securities accounts in Clearstream Banking and Euroclear’s names on the books of their respective U.S. Depository, which, in turn, holds such positions in customers’ securities accounts in its U.S. Depository’s name on the books of DTC. Citibank, N.A. acts as depository for Clearstream Banking and the Euroclear Operator acts as depository for Euroclear (the “U.S. Depositories”).

Holders of the Bonds may hold their Bonds through DTC (in the United States) or Clearstream Banking or Euroclear (in Europe) if they are participants of such systems, or directly through organizations that are participants in such systems.

Investors electing to hold their Bonds through Euroclear or Clearstream Banking accounts will follow the settlement procedures applicable to conventional EuroBonds in registered form. Securities will be credited to the securities custody accounts of Euroclear and Clearstream Banking holders on the business day following the settlement date against payment for value on the settlement date.

Distributions with respect to the Bonds held beneficially through Clearstream Banking will be credited to the cash accounts of Clearstream Banking customers in accordance with its rules and procedures, to the extent received by its U.S. Depository. Distributions with respect to the Bonds held beneficially through Euroclear will be credited to the cash accounts of Euroclear Participants in accordance with the Terms and Conditions, to the extent received by its U.S. Depository. Such distributions will be subject to tax reporting in accordance with relevant United States tax laws and regulations.

Clearstream Banking or the Euroclear Operator, as the case may be, will take any other action permitted to be taken by an owner of the Bonds on behalf of a Clearstream Banking customer or Euroclear Participant only in accordance with the relevant rules and procedures and subject to the U.S. Depository's ability to effect such actions on its behalf through DTC.

### **Secondary Market Trading**

Secondary market trading between Issuers (other than U.S. Depositories) will be settled using the procedures applicable to U.S. corporate debt obligations in same-day funds.

Secondary market trading between Euroclear Participants and/or Clearstream Banking customers will be settled using the procedures applicable to conventional Eurobonds in same-day funds.

When securities are to be transferred from the account of an Issuer (other than U.S. Depositories) to the account of a Euroclear Participant or a Clearstream Banking customer, the purchaser must send instructions to the applicable U.S. Depository one business day before the settlement date. Euroclear or Clearstream Banking, as the case may be, will instruct its U.S. Depository to receive the securities against payment. Its U.S. Depository will then make payment to the Issuer's account against delivery of the securities. After settlement has been completed, the securities will be credited to the respective clearing system and by the clearing system, in accordance with its usual procedures, to the Euroclear Participant's or Clearstream Banking customers' accounts. Credit for the securities will appear on the next day (European time) and cash debit will be back-valued to, and the interest on the Bonds will accrue from the value date (which would be the preceding day when settlement occurs in New York). If settlement is not completed on the intended value date (i.e., the trade fails), the Euroclear or Clearstream Banking cash debit will be valued instead as of the actual settlement date.

Euroclear Participants and Clearstream Banking customers will need to make available to the respective clearing systems the funds necessary to process same-day funds settlement. The most direct means of doing so is to pre-position funds for settlement, either from cash on hand or existing lines of credit, as they would for any settlement occurring within Euroclear or Clearstream Banking. Under this approach, they may take on credit exposure to Euroclear or Clearstream Banking until the securities are credited to their accounts one day later.

As an alternative, if Euroclear or Clearstream Banking has extended a line of credit to them, participants/customers can elect not to pre-position funds and allow that credit line to be drawn upon to finance settlement. Under this procedure, Euroclear Participants or Clearstream Banking customers purchasing securities would incur overdraft charges for one day, assuming they cleared the overdraft when the securities were credited to their accounts. However, interest on the securities would accrue from the value date. Therefore, in many cases, the investment income on securities earned during that one day period may substantially reduce or offset the amount of such overdraft charges, although this result will depend on each participant's/customer's particular cost of funds.

Because the settlement is taking place during New York business hours, Issuers can employ their usual procedures for sending securities to the applicable U.S. Depository for the benefit of Euroclear Participants or Clearstream Banking customers. The sale proceeds will be available to the DTC seller on the settlement date. Thus, to the Issuer, a cross-market transaction will settle no differently from a trade between two Issuers.

Due to time zone differences in their favor, Euroclear Participants and Clearstream Banking customers may employ their customary procedure for transactions in which securities are to be transferred by the respective clearing system, through the applicable U.S. Depository to another Issuer's. In these cases, Euroclear will instruct its U.S. Depository to credit the securities to the Issuer's account against payment. The payment will then be reflected in the account of the Euroclear Participant or Clearstream Banking customer the following business day, and receipt of the cash proceeds in the Euroclear Participants' or Clearstream Banking customers' accounts will be back-valued to the value date (which would be the preceding day, when settlement occurs in New York). If the Euroclear Participant or Clearstream Banking customer has a line of credit with its respective clearing system and elects to draw on such line of credit in anticipation of receipt of the sale proceeds in its account, the back-valuation may substantially reduce or offset any overdraft charges incurred over that one-day period. If settlement is not completed on the intended value date (i.e., the trade fails), receipt of the cash proceeds in the Euroclear Participant's or Clearstream Banking customer's accounts would instead be valued as of the actual settlement date.

**Procedures May Change**

Although DTC, Clearstream Banking and Euroclear have agreed to these procedures to facilitate transfers of securities among DTC and its Issuers, Clearstream Banking and Euroclear, they are under no obligation to perform or continue to perform these procedures and these procedures may be discontinued and may be changed at any time by any of them.

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