

**REFUNDING ISSUE — BOOK-ENTRY ONLY**

*In the opinion of Nixon Peabody LLP, Bond Counsel, under existing law and assuming compliance with the tax covenants described herein, and the accuracy of certain representations and certifications made by the Commonwealth described herein, interest on the 2010A Senior Notes is excluded from gross income for Federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”). Bond Counsel is also of the opinion that such interest is not treated as a preference item in calculating the alternative minimum tax imposed under the Code with respect to individuals and corporations. Bond Counsel is further of the opinion that, under existing law, interest on the 2010A Senior Notes is exempt from Massachusetts personal income taxes, and the 2010A Senior Notes are exempt from Massachusetts personal property taxes. See “TAX EXEMPTION” herein regarding certain other tax considerations.*



**\$380,530,000**  
**THE COMMONWEALTH OF MASSACHUSETTS**  
**Special Obligation Refunding Notes**  
**(Senior Federal Highway Grant Anticipation Note Program)**  
**2010 Series A**

**Dated: Date of Delivery**

**Due: As shown on the inside cover**

*The Special Obligation Refunding Notes (Senior Federal Highway Grant Anticipation Note Program), 2010 Series A (the “2010A Senior Notes”) are being issued by The Commonwealth of Massachusetts (the “Commonwealth”) pursuant to Section 53A of Chapter 29 of the Massachusetts General Laws and an Amended and Restated Trust Agreement dated as of December 1, 2010 (the “Trust Agreement”), by and between the Commonwealth and U.S. Bank National Association, Boston, Massachusetts, as successor trustee (the “Trustee”).*

As more fully described herein, the 2010A Senior Notes are special limited obligations of the Commonwealth, payable solely from a pledge of the Pledged Funds, as defined herein, and all Funds and Accounts, other than the Project Fund and the Rebate Fund, held under the Trust Agreement. The Pledged Funds are reimbursements received or to be received by the Commonwealth from the federal government pursuant to the Federal-Aid Highway Program, any other monies from time to time deposited in the Federal Highway Grant Anticipation Trust Fund of the Commonwealth, and, in certain limited circumstances, a portion of the proceeds of the Commonwealth’s gasoline excise tax and certain other monies described herein.

**The 2010A Senior Notes shall be payable solely from the Pledged Funds as described herein. The 2010A Senior Notes are not a general obligation of the Commonwealth and the full faith and credit of the Commonwealth is not pledged to the payment of the 2010A Senior Notes. See *Security and Sources of Payment for the Senior Notes Under the Trust Agreement* herein.**

**In connection with the issuance of the 2010A Senior Notes, the Underwriters, as the original owners of the 2010A Senior Notes, will consent to certain amendments to the Original Trust Agreement (as herein defined).** See *Summary of Certain Amendments to the Original Trust Agreement* herein.

The 2010A Senior Notes will be issued only as fully registered notes, registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). Purchases of beneficial interests in the 2010A Senior Notes will be made in book-entry form in denominations of \$5,000 principal amount or whole multiples thereof. Purchasers will not be entitled to receive physical delivery of the 2010A Senior Notes.

Principal and interest on the 2010A Senior Notes (with interest accruing from the dated date and payable on June 15, 2011 and thereafter on December 15 and June 15 of each year) will be payable to DTC by the Trustee. So long as DTC or its nominee remains the registered owner, disbursements of such payments to DTC Participants, as defined herein, are the responsibility of DTC and disbursements of such payments to the purchasers of the 2010A Senior Notes are the responsibility of DTC Participants, as described herein. The 2010A Senior Notes are not subject to redemption prior to stated maturity.

The 2010A Senior Notes are offered, subject to prior sale, when, as and if issued by the Commonwealth and accepted by the Underwriters, and to the approval of legality of the 2010A Senior Notes and certain other matters by Nixon Peabody LLP, Boston, Massachusetts, Bond Counsel. Certain legal matters will be passed upon for the Underwriters by their counsel, Edwards Angell Palmer & Dodge LLP, Boston, Massachusetts. It is expected that the 2010A Senior Notes will be available for delivery to DTC in New York, New York, or its custodial agent on or about December 23, 2010.

**Jefferies & Company**

**BofA Merrill Lynch  
Fidelity Capital Markets**

**J.P. Morgan**

**Citi  
Morgan Stanley**

**Barclays Capital  
Raymond James & Associates, Inc.**

**Morgan Keegan  
RBC Capital Markets**

**Ramirez & Co., Inc.  
Siebert Brandford Shank & Co., LLC**

**THE COMMONWEALTH OF MASSACHUSETTS**  
**\$380,530,000**  
**Special Obligation Refunding Notes**  
**(Senior Federal Highway Grant Anticipation Note Program)**  
**2010 Series A**

**Dated: Date of Delivery**

**Due: June 15 and December 15, as shown below**

<u>Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Yield</u>	<u>CUSIP* Numbers</u>
June 15, 2011	\$45,065,000	1.00%	0.30%	576004GD1
December 15, 2011	43,090,000	1.00	0.34	576004GE9
June 15, 2012	2,630,000	2.00	0.78	576004GF6
June 15, 2012	21,850,000	3.00	0.78	576004GN9
June 15, 2012	22,945,000	4.00	0.78	576004GU3
December 15, 2012	25,000,000	3.00	0.83	576004GG4
December 15, 2012	25,945,000	4.00	0.83	576004GP4
June 15, 2013	4,005,000	4.00	1.17	576004GH2
June 15, 2013	66,395,000	5.00	1.17	576004GQ2
December 15, 2013	710,000	4.00	1.25	576004GJ8
December 15, 2013	36,485,000	5.00	1.25	576004GR0
June 15, 2014	8,455,000	4.00	1.50	576004GK5
December 15, 2014	5,370,000	4.00	1.65	576004GL3
December 15, 2014	26,745,000	5.00	1.65	576004GS8
June 15, 2015	7,440,000	4.00	1.86	576004GM1
June 15, 2015	38,400,000	5.00	1.86	576004GT6

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\* Copyright, American Bankers Association. CUSIP data herein are provided by Standard & Poor's, CUSIP Service Bureau, a division of The McGraw Hill Companies, Inc. The CUSIP numbers listed above are being provided solely for the convenience of Noteholders only at the time of issuance of the 2010A Senior Notes and the Commonwealth does not make any representation with respect to such numbers or undertake any responsibility for their accuracy now or at any time in the future. The CUSIP number for a specific maturity is subject to being changed after the issuance of the 2010A Senior Notes as a result of various subsequent actions including, but not limited to, a refunding in whole or in part of such maturity or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of certain maturities of the 2010A Senior Notes.

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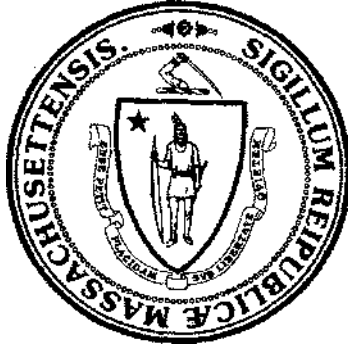
No dealer, broker, salesperson or other person has been authorized by The Commonwealth of Massachusetts (the "Commonwealth") or the Underwriters of the 2010A Senior Notes to give any information or to make any representations, other than those contained in this Official Statement, and if given or made, such other information or representations must not be relied upon as having been authorized by either of the foregoing. This Official Statement does not constitute an offer to sell or a solicitation of any offer to buy nor shall there be any sale of the 2010A Senior Notes offered hereby by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. The information set forth herein has been furnished by the Commonwealth and includes information obtained from other sources which are believed to be reliable, but is not guaranteed as to accuracy or completeness and is not to be construed as a representation by the Underwriters of the 2010A Senior Notes or, as to information from other sources, the Commonwealth. 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 any implication that there has been no change in the affairs of the Commonwealth, or its agencies, authorities and political subdivisions, since the date hereof, except as expressly set forth herein.

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.

In connection with this offering, the Underwriters may over allot or effect transactions that stabilize or maintain the market price of the 2010A Senior Notes at levels above those that might otherwise prevail on the open market. Such stabilizing, if commenced, may be discontinued at any time.

This Official Statement contains certain forward-looking statements that are subject to a variety of risks and uncertainties that could cause actual results to differ from the projected results, including without limitation general economic and business conditions, conditions in the financial markets, the financial condition of the Commonwealth and various state agencies and authorities, receipt of federal grants, litigation, arbitration, force majeure events and various other factors that are beyond the control of the Commonwealth and its various agencies and authorities. Because of the inability to predict all factors that may affect future decisions, actions, events or financial circumstances, including, in particular, the current adverse global financial market and economic conditions, what actually happens may be different from what is set forth in such forward-looking statements. Forward-looking statements are indicated by use of such words as "may," "will," "should," "intends," "expects," "believes," "anticipates," "estimates" and others.

**THE COMMONWEALTH OF MASSACHUSETTS**



**CONSTITUTIONAL OFFICERS**

**Deval L. Patrick..... Governor**  
**Timothy P. Murray ..... Lieutenant Governor**  
**William F. Galvin .....Secretary of the Commonwealth**  
**Martha Coakley.....Attorney General**  
**Timothy P. Cahill ..... Treasurer and Receiver-General**  
**A. Joseph DeNucci..... Auditor**

**LEGISLATIVE OFFICERS**

**Therese Murray.....President of the Senate**  
**Robert A. DeLeo..... Speaker of the House**

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## SUMMARY OF TERMS

*The following is qualified in its entirety by reference to the information appearing elsewhere in this Official Statement. Terms used in this summary and not defined herein are defined in Appendix B: Summary of Certain Provisions of the Trust Agreement.*

Issuer .....	The Commonwealth of Massachusetts (the “Commonwealth”), acting pursuant to Section 53A of Chapter 29 of the Massachusetts General Laws and Sections 9 through 10D of Chapter 11 of the Acts of 1997, as amended (the “Act”).
Securities Offered .....	Special Obligation Refunding Notes (Senior Federal Highway Grant Anticipation Note Program), 2010 Series A (the “2010A Senior Notes”) to be issued pursuant to the Amended and Restated Trust Agreement by and between the Commonwealth and the Trustee dated as of December 1, 2010 as supplemented and amended by a Fifth Supplemental Trust Agreement of even date therewith (as amended, restated and supplemented, the “Trust Agreement”).
Purpose of Issue.....	<p>The proceeds of the 2010A Senior Notes are being issued to refund <u>all</u> of the Commonwealth’s Federal Highway Grant Anticipation Notes, 1998 Series A (the “1998A Notes”), Federal Highway Grant Anticipation Notes, 1998 Series B (the “1998B Notes”) and Federal Highway Grant Anticipation Notes, 2000 Series A (the “2000A Notes”). The 1998A Notes, 1998B Notes, 2000A Notes and the Commonwealth’s Special Obligation Refunding Notes (Federal Highway Grant Anticipation Note Program), 2003 Series A are collectively referred to herein as the “Prior Notes”. The Prior Notes to be refunded by the 2010A Senior Notes are identified in Appendix C (the “Refunded Notes”).</p> <p>The Prior Notes were issued pursuant to a Trust Agreement by and between the Commonwealth and State Street Bank and Trust Company, as the original trustee thereunder, dated as of June 1, 1998 as supplemented and amended by a First Supplemental Trust Agreement of even date therewith, a Second Supplemental Trust Agreement dated as of November 1, 1998, a Third Supplemental Trust Agreement dated as of November 1, 2000 and a Fourth Supplemental Trust Agreement dated as of June 19, 2003 (the “Fourth Supplemental Agreement,” and collectively as supplemented and amended through the Fourth Supplemental Agreement, the “Original Trust Agreement”). The Prior Notes and the 2010A Senior Notes are referred to herein collectively as the “Senior Notes.”</p>
Trustee .....	U.S. Bank National Association, Boston, Massachusetts, successor Trustee.
Not General Obligations .....	The Senior Notes are not general obligations of the Commonwealth. The full faith and credit of the Commonwealth is not pledged to the payment of the Senior Notes.
Security and Sources of Payment for the Senior Notes .....	Principal of and interest and premium, if any, on the Senior Notes and other obligations of the Commonwealth under the Trust Agreement (collectively, the “Senior Trust Agreement Obligations”) are payable solely from and are secured by the following (collectively, the “Pledged Funds”):

- (a) all federal highway construction reimbursements and other federal highway assistance (“Federal Highway Reimbursements”) that the Commonwealth from time to time shall receive with respect to federally-aided highway construction projects under or in accordance with Title 23 of the United States Code or any successor program established under federal law (the “Federal-Aid Highway Program”);
- (b) any other monies from time to time deposited in the Federal Highway Grant Anticipation Note Trust Fund of the Commonwealth established by Section 10 of the Act (the “Federal Highway Grant Anticipation Note Trust Fund”);
- (c) all amounts from time to time credited to the Federal Highway Grant Anticipation Note Trust Fund (excluding the Project Fund established therein) and to the funds and accounts (excluding the Rebate Fund) established under the Trust Agreement;
- (d) any amounts payable to the Commonwealth by a Hedge Provider pursuant to a Qualified Hedge Agreement relating to the Senior Notes; and
- (e) upon the occurrence and during the continuation of a True-Up Condition, after the payment of the Senior CTF Obligations (as herein defined), the Alternative Revenues (each as described below).

Closure of Lien of Trust Agreement.....	After issuance of the 2010A Senior Notes, the Commonwealth will not be permitted to issue additional notes under the Trust Agreement other than additional refunding notes.
Certain Amendments to the Original Trust Agreement .....	In connection with the issuance of the 2010A Senior Notes, the Underwriters, as the original owners of the 2010A Senior Notes, will consent to certain amendments to the Original Trust Agreement. See <i>Summary of Certain Amendments to the Original Trust Agreement</i> .
Federal Highway Reimbursements.....	Under the Federal-Aid Highway Program, Federal Highway Reimbursements are paid to the Commonwealth from revenues collected by the United States Treasury on certain federal taxes on gasoline, tire sales, truck sales and other items and deposited into the federal Highway Trust Fund for distribution, subject to Congressional appropriation, to the states in accordance with the federal highway aid programs established initially by the Federal-Aid Highway Act of 1956 and continued under successor statutes. See Appendix A- <i>The Federal-Aid Highway Program</i> .  Application of Federal Highway Reimbursements to pay principal of and interest on the Senior Notes when due is <u>not</u> subject to appropriation by the Massachusetts Legislature. See <i>Commonwealth Participation in the Federal-Aid Highway Program</i> .
Debt Service Funding .....	Semi-annual debt service payments on the Senior Notes including the 2010A Senior Notes are due June 15 and December 15 and are required to be funded one year in advance. It is anticipated that the final deposit for debt service for Senior Trust Agreement Obligations will be made on June 15, 2014. See <i>Security and</i>



*Sources of Payment for the Senior Notes Under the Trust Agreement* —Funding of Senior Trust Agreement Obligations.

True-Up Condition ..... Not later than December 15 in each FFY, the State Treasurer will determine and certify (a) the aggregate amount appropriated nationwide from the federal Highway Trust Fund, for the purposes of carrying out the provisions of Title 23 of the United States Code with respect to federal-aid highways, for the current FFY and (b) the Debt Service Coverage Ratio for the Commonwealth’s following state fiscal year (“SFY”). If both the amount described in (a) above is less than \$17.1 billion and the Debt Service Coverage Ratio described in (b) above is less than 120%, then such combination of conditions shall constitute a “True-Up Condition.”

If a True-Up Condition shall occur, the Act requires the Governor of the Commonwealth to include in the proposed operating budget of the Commonwealth to be submitted to the Massachusetts Legislature for said following SFY a recommendation to appropriate an amount of Alternative Revenues equal to the Senior Trust Agreement Obligations due in the following SFY minus the amount of Pledged Funds expected to be available to pay such Senior Trust Agreement Obligations. See *Security and Sources of Payment for the Senior Notes Under the Trust Agreement* —Pledge of Alternative Revenues.

Pledge of Alternative Revenues..... Upon the issuance of the 2010A Senior Notes and the adoption of the Trust Agreement, the provisions governing the pledge of Alternative Revenues in the Original Trust Agreement will be amended. As so amended, the Trust Agreement will provide that the pledge of the Alternative Revenues to the Senior Notes is subordinate to the pledge of and lien on receipts from the Commonwealth’s gasoline excise tax imposed under Chapter 64A of the Massachusetts General Laws (the “Gasoline Tax”) credited to the Commonwealth Transportation Fund, for the payment of obligations of the Commonwealth issued or to be issued under the provisions of Section 20 of Chapter 29 of the Massachusetts General Laws (the “Special Obligation Act”), referred to herein as the “Senior CTF Obligations.” See *Security and Sources of Payment for the Senior Notes Under the Trust Agreement* — Amendments to the Trust Agreement. For purposes of this Official Statement, the term “Gasoline Tax” refers only to the gasoline excise tax imposed under such Chapter 64A (not including aviation fuel), and not to other motor fuel taxes imposed from time to time by the Commonwealth.

In the event of a True-Up Condition, the Pledged Funds will include the Alternative Revenues, consisting of an amount equal to ten cents (10¢) per gallon of the Commonwealth’s Gasoline Tax credited to the Commonwealth Transportation Fund, after the payment of the Senior CTF Obligations. Application of Alternative Revenues to pay the principal of and interest on the Senior Notes and other Senior Trust Agreement Obligations will be subject to appropriation by the Massachusetts Legislature. See *Security and Sources of Payment for the Senior Notes Under the Trust Agreement* —Pledge of Alternative Revenues and *The Alternative Revenues*.

Perfection and Priority of Lien on Pledged Funds..... The Act provides that the lien of the Trust Agreement on the Pledged Funds will be perfected by filing the Trust Agreement in the records of the State Treasurer. The Trust Agreement has been so filed and in the opinion of Nixon Peabody LLP, Bond Counsel,

the lien of such Pledged Funds securing the Senior Trust Agreement Obligations is valid and binding as against all persons or entities of any kind having claims of any kind in tort, contract or otherwise, irrespective of whether such persons or entities have notice thereof. Bond Counsel is further of the opinion that neither the Commonwealth nor the Federal Highway Grant Anticipation Note Trust Fund is eligible to seek protection from creditors under Title 11 of the United States Code. The lien of the Trust Agreement on the Federal Highway Reimbursements is limited to such monies when received by the Commonwealth and does not include a pledge of the right to receive such reimbursements or other assistance from the federal government. No person or entity, other than the Commonwealth, will be entitled to assert any claim against the federal government with respect to such reimbursements or other assistance.

Senior Notes ..... The issuance of the 2010A Senior Notes will constitute an issuance of Refunding Notes by the Commonwealth under the Act and the Trust Agreement. The Act authorizes the issuance of securities yielding aggregate net proceeds of up to \$1.5 billion (excluding proceeds of refunding notes). No additional Senior Notes may be issued under the Trust Agreement except for refunding notes.

Commonwealth Covenants ..... As authorized by the Act, the Trust Agreement contains covenants of the Commonwealth with the holders of the Senior Notes that, so long as any Senior Notes shall remain outstanding or any Senior Trust Agreement Obligations shall remain unpaid:

(a) Federal Highway Reimbursements shall not be diverted from the purposes identified in the Act or the Trust Agreement (except as provided in the Trust Agreement), nor shall the trusts with which the Federal Highway Reimbursements are impressed under the Act and the Trust Agreement be broken, and the pledge and dedication in trust of the Federal Highway Reimbursements shall continue unimpaired and unabrogated;

(b) Except to the extent otherwise required by applicable federal law or regulations, the Commonwealth will not cause or permit the Commonwealth's Advance Construction Balance under the Federal-Aid Highway Program as of any date of calculation to be less than the principal amount of Senior Notes Outstanding as of such date, taking into account the principal amount of Senior Notes, if any, to be paid, defeased or redeemed as a result of the conversion on such date of a portion of the Advance Construction Balance to Obligation Authority under the Federal-Aid Highway Program;

(c) In any SFY with respect to which a True-Up Condition has occurred and is continuing, unless and until an appropriation has been made or an amount is otherwise made available which is sufficient to pay the Senior Trust Agreement Obligations due during such SFY, none of the Alternative Revenues, other than any amount pledged to the payment of Senior CTF Obligations, shall be applied to any use other than the payment of such Senior Trust Agreement Obligations;

(d) Until the State Treasurer, after consultation with the Secretaries, determines that available funds in the Federal Highway Grant Anticipation Note Trust Fund and in the Funds and Accounts established under the Trust Agreement will be sufficient to pay all Senior Trust Agreement Obligations, the rate of the

Commonwealth Gasoline Tax shall not be reduced below the sum of ten cents (10¢) per gallon; and

(e) at least ten cents (10¢) per gallon of the Gasoline Tax shall remain free and clear of any superior or equal lien thereon, other than the pledge securing the Senior CTF Obligations.

Optional Redemption.....	The 2010A Senior Notes are not subject to optional redemption prior to maturity.
Interest and Principal .....	Interest on the 2010A Senior Notes will accrue from their dated date at the rates set forth on the inside cover page hereof. Interest on the 2010A Senior Notes will be payable semiannually on June 15 and December 15, commencing on June 15, 2011. Principal of the 2010A Senior Notes will be due as shown on the inside cover page.
Tax Exemption .....	In the opinion of Nixon Peabody LLP, Bond Counsel, under existing law and assuming compliance with the tax covenants described herein, and the accuracy of certain representations and certifications made by the Commonwealth described herein, interest on the 2010A Senior Notes is excluded from gross income for Federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"). Bond Counsel is also of the opinion that such interest is not treated as a preference item in calculating the alternative minimum tax imposed under the Code with respect to individuals and corporations. Bond Counsel is further of the opinion that, under existing law, interest on the 2010A Senior Notes is exempt from Massachusetts personal income taxes, and the 2010A Senior Notes are exempt from Massachusetts personal property taxes. See <i>Tax Exemption</i> herein regarding certain other tax considerations.
Ratings.....	The 2010A Senior Notes have been rated "AAA" by Standard & Poor's Ratings Group, Inc., "Aa1" by Moody's Investors Service, Inc. and "AA+" by Fitch Ratings, Inc. Such ratings reflect only the respective views of such organizations, and an explanation of the significance of such ratings may be obtained from the rating agency furnishing the same. There is no assurance that a rating will continue for any given period of time or that a rating will not be revised or withdrawn entirely by any or all of such rating agencies, if, in its or their judgment, circumstances so warrant. Any downward revision or withdrawal of a rating could have an adverse effect on the market prices of the 2010A Senior Notes.

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## OFFICIAL STATEMENT

**\$380,530,000**

**THE COMMONWEALTH OF MASSACHUSETTS  
Special Obligation Refunding Notes  
(Senior Federal Highway Grant Anticipation Note Program)  
2010 Series A**

### INTRODUCTION

This Official Statement, including the cover pages and the Appendices hereto, provides certain information in connection with the issuance by The Commonwealth of Massachusetts (the “Commonwealth”), pursuant to Section 53A of Chapter 29 of the Massachusetts General Laws of its \$380,530,000 Special Obligation Refunding Notes (Senior Federal Highway Grant Anticipation Note Program), 2010 Series A (the “2010A Senior Notes”). The 2010A Senior Notes will be issued under the Amended and Restated Trust Agreement dated as of December 1, 2010 by and between the Commonwealth and U.S. Bank National Association, as successor trustee (the “Trustee”), as supplemented by the Fifth Supplemental Trust Agreement dated as of December 1, 2010 (as so supplemented, the “Trust Agreement”). The original Trust Agreement was dated as of June 1, 1998, and was supplemented and amended by the First Supplemental Trust Agreement dated as of June 1, 1998, by the Second Supplemental Trust Agreement dated as of November 1, 1998, by the Third Supplemental Trust Agreement dated as of November 1, 2000 and by the Fourth Supplemental Trust Agreement dated as of June 19, 2003 ( the “Fourth Supplemental Agreement”) (as supplemented and amended through the Fourth Supplemental Agreement, the “Original Trust Agreement”).

#### **General**

The 2010A Senior Notes are being issued to refund all of the Commonwealth’s Federal Highway Grant Anticipation Notes, 1998 Series A (the “1998A Notes”), Federal Highway Grant Anticipation Notes, 1998 Series B (the “1998B Notes”) and Federal Highway Grant Anticipation Notes, 2000 Series A (the “2000A Notes”). The 1998A Notes, 1998B Notes, 2000A Notes and the Commonwealth’s Special Obligation Refunding Notes (Federal Highway Grant Anticipation Note Program), 2003 Series A (the “2003 Notes”) are collectively referred to herein as the “Prior Notes.” The Prior Notes were issued pursuant to Sections 9 through 10D of Chapter 11 of the Massachusetts Acts of 1997, as amended (the “Act”). The Prior Notes to be refunded by the 2010A Senior Notes are identified in Appendix C (the “Refunded Notes”). See *The 2010A Senior Notes – Plan of Refunding and Appendix C—Table of Refunded Notes*. The Prior Notes and the 2010A Senior Notes are referred to herein collectively as the “Senior Notes.”

After the issuance of the 2010A Senior Notes, the Commonwealth will not be permitted to issue additional Senior Notes under the Trust Agreement, except for refunding notes.

#### **The Senior Federal Highway Grant Anticipation Note Program**

The Act originally authorized the issuance of up to \$1.5 billion (measured in net proceeds to the Commonwealth) of Senior Notes to finance a portion of the costs of construction of the Central Artery/Ted Williams Tunnel Project (the “CA/T Project”). The entire authorized amount has been issued. The CA/T Project was substantially completed in January 2006. No additional Senior Notes may be issued to fund CA/T Project costs.

The Senior Notes, including the 2010A Senior Notes, are payable solely from the Pledged Funds (as described in *Security and Sources of Payment for the Senior Notes under the Trust Agreement - General*). The 2010A Senior Notes are not general obligations of the Commonwealth, and the full faith and credit of the Commonwealth is not pledged to the payment of principal of, and interest on, any of the Senior Notes.

Payment of the principal of, and interest on, the Senior Notes will be made from monies received by the Commonwealth from the federal government under existing and future federal highway construction assistance programs until paid at maturity. All such assistance received by the Commonwealth will be collected for the benefit of the Senior Noteholders in a trust fund established under the Act and, to the extent needed for such purpose, will be retained in trust to provide for debt service on the Senior Notes. Application of such funds to the payment of principal of and interest on the Senior Notes is permitted under federal law and may be made without legislative appropriation under Massachusetts law. Neither the Commonwealth nor the trust fund established to secure the Senior Notes is eligible for bankruptcy protection. In certain limited circumstances, a portion of the proceeds of the Commonwealth's gasoline excise tax and certain other moneys may also be included as Pledged Funds. See *Security and Sources of Payment for the Senior Notes under the Trust Agreement – Pledge of Alternative Revenues*.

Federal highway construction assistance is paid to all states including the Commonwealth through the Federal-Aid Highway Program, hereinafter defined, from revenues collected by the United States Treasury from certain federal taxes on gasoline, tire sales and other items, which revenues are deposited into the Federal Highway Trust Fund ("HTF"). Distribution of assistance from the HTF is subject to periodic authorization and annual appropriation by the United States Congress. Since such assistance was established by the Federal-Aid Highway Act of 1956, the Federal-Aid Highway Program has been reauthorized numerous times in various forms at generally increasing funding levels. Actual payments to states have continued without interruption since 1956. The most recent reauthorization, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users was enacted in 2005. As amended to date, this legislation is referred to as "SAFETEA-LU." SAFETEA-LU expired on September 30, 2009, which was the end of federal fiscal year ("FFY") 2009, and was extended through December 31, 2010. It is unknown whether reauthorizing legislation will be enacted by December 31, 2010.

Federal highway construction assistance is paid to all states including the Commonwealth on a reimbursement basis. Access to all of the amounts of available federal highway assistance for Massachusetts will depend, in part, on its continued spending on federally-eligible projects. The Commonwealth expects that, as a result of its extensive statewide road and bridge program, it will have sufficient federally eligible project expenditures to be able to utilize all the federal highway assistance made available to it. In conjunction with the development of the Statewide Transportation Improvement Plan ("STIP") for FFY 2011-2014, the Federal Highway Administration ("FHWA") provided the Commonwealth with guidance of annual Obligation Authority ("OA") of \$600 million, \$40 million of which is redistributed funds.

In addition, the Commonwealth has made extensive use of Advance Construction ("A/C") status under the Federal-Aid Highway Program. By utilizing A/C status, the Commonwealth may pre-qualify projects and expenditures thereon for federal reimbursement, subject only to the availability of future federal assistance. As of September 30, 2010, Massachusetts had an estimated \$948 million in planned costs so qualified, which, when spent, should ensure that it will be able to draw down future federal assistance when available. The Commonwealth has covenanted under the Trust Agreement to maintain an A/C balance at least equal to the principal amount of Senior Notes Outstanding to help ensure that it will be able to draw down federal funds to meet debt service funding requirements.

The Commonwealth will, as described under *Security and Sources of Payment for the Senior Notes Under the Trust Agreement – Pledge of Alternative Revenues*, under a limited circumstance involving the elimination or substantial reduction of national funding for the Federal-Aid Highway Program, dedicate a portion of its receipts from the gasoline tax imposed by Chapter 64A of the Massachusetts General Laws not including aviation fuel (the "Gasoline Tax") equal to ten cents (10¢) per gallon to the payment of debt service on the Senior Notes, after the payment of obligations of the Commonwealth secured in part by the Gasoline Tax (the "Senior CTF Obligations") issued or to be issued under the provisions of Section 20 of Chapter 29 (the "Special Obligation Act"). Bonds issued pursuant to the Special Obligation Act are referred to herein collectively as "Special Obligation Bonds." Payment of debt service on the Senior Notes from any Gasoline Tax proceeds is subordinate to the payment of the Senior CTF Obligations and is subject to appropriation by the Massachusetts Legislature. However, in the event that such limited circumstance occurs, such receipts will not be available for any other purpose (other than any amount pledged to the payment of Senior CTF Obligations) until the Massachusetts Legislature makes an adequate appropriation for debt service on the Senior Notes or other funds are made available for such purpose. The provisions of the Trust Agreement subordinating the pledge of certain Gasoline Tax receipts thereunder to the pledge of Commonwealth Transportation Fund revenues (described below), including receipts from the Gasoline

Tax, to the Senior CTF Obligations, reflect the amendment of the terms of the Original Trust Agreement which will be adopted at the time of issuance of the 2010A Senior Notes. For more information on this and other amendments to the Trust Agreement, see *Security and Sources of Payment for the Senior Notes Under the Trust Agreement—Amendments to the Trust Agreement* and *Summary of Certain Amendments to the Original Trust Agreement*.

### **Accelerated Bridge Program Act**

Pursuant to Chapter 233 of the Acts of 2008 (the “Accelerated Bridge Program Act”), the Commonwealth commenced a program to finance the accelerated capital improvement of bridges and related infrastructure (the “Accelerated Bridge Program”). The Accelerated Bridge Program Act authorized the issuance of up to \$1.108 billion Federal Highway Grant Anticipation Notes to finance design, construction, reconstruction and repair of or improvements to bridges and approaches, which, when issued, will be secured by a subordinated lien on the Pledged Funds. The Accelerated Bridge Program Act also authorized the issuance of up to \$1.876 billion in Special Obligation Bonds of the Commonwealth secured by revenues in the Commonwealth Transportation Fund, to be issued for such purposes pursuant to the Special Obligation Act. Under the Accelerated Bridge Program Act, the Commonwealth may issue any portion of the therein authorized Federal Highway Grant Anticipation Notes as Special Obligation Bonds or Special Obligation Bonds as Federal Highway Grant Anticipation Notes, provided that the aggregate amount of such Special Obligation Bonds and Federal Highway Grant Anticipation Notes shall not exceed \$2.984 billion, and provided that the Governor and State Treasurer determine that issuing such Special Obligation Bonds or Federal Highway Grant Anticipation Notes in such manner is necessary or is in the best financial interests of the Commonwealth, based on their consideration of: (i) the Commonwealth’s authority under federal law to issue Federal Highway Grant Anticipation Notes; (ii) generally prevailing financial market conditions; (iii) the impact of each financing approach on the overall capital financing plans and needs of the Commonwealth; (iv) any ratings assigned to outstanding bonds of the Commonwealth and any ratings expected to be assigned by any nationally-recognized credit rating agency to the bonds or notes proposed to be issued; and (v) any applicable provisions of Chapter 29 of the General Laws.

### **Commonwealth Transportation Fund**

In 2009, the Commonwealth enacted comprehensive transportation reform legislation as Chapter 25 of the Acts of 2009, as amended (the “Transportation Reform Act”) to reorganize its transportation agencies and to revise certain transportation financing statutes. The Transportation Reform Act established the Commonwealth Transportation Fund under Section 2ZZZ of Chapter 29 of the Massachusetts General Laws (referred to herein as the “Commonwealth Transportation Fund” or “CTF”), to which 99.85% of receipts from the Commonwealth’s Gasoline Tax, which is currently imposed at a rate of twenty-one cents (21¢) per gallon, are credited, as well as certain other revenues of the Commonwealth including other motor fuel excises and fees from motor vehicle licensing and registration. The Transportation Reform Act also created a new entity, the Massachusetts Department of Transportation (“MassDOT”) to manage and coordinate the Commonwealth’s transportation functions, including the divisions of highways (formerly the MassHighway Department), transit (bus, subway and commuter rail services), the registry of motor vehicles and aeronautics.

### **The Senior CTF Obligations**

The Commonwealth currently has outstanding Special Obligation Bonds secured by the pledge of six and eighty-six hundredths cents (6.86¢) per gallon of revenues from the Commonwealth’s Gasoline Tax (the “Prior Special Obligation Bonds”) in the aggregate principal amount of approximately \$413.9 million. The Prior Special Obligation Bonds are included in the definition of Senior CTF Obligations, and the pledge of Alternative Revenues under the Trust Agreement is subordinate to the pledge of a portion of Gasoline Tax receipts to the Prior Special Obligation Bonds.

Concurrently with the delivery of the 2010A Senior Notes, the Commonwealth expects to issue its Commonwealth Transportation Fund Revenue Bonds (Accelerated Bridge Program), 2010 Series A (Federally Taxable—Build America Bonds / Recovery Zone Economic Development Bonds—Direct Pay to Issuer) (the “2010 CTF Bonds”), pursuant to a Trust Agreement dated as of December 1, 2010, as supplemented and amended by a First Supplemental Trust Agreement of even date therewith (together, the “Senior CTF Trust Agreement”) between the Commonwealth and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Senior CTF Trustee”)

and pursuant to the Accelerated Bridge Program Act (described below). The 2010 CTF Bonds will be secured by a pledge of certain monies credited to the Commonwealth Transportation Fund, including Gasoline Tax receipts, receipts from other motor fuel excises and fees from motor vehicle licensing and registration. The 2010 CTF Bonds and any other bonds issued from time to time under the Senior CTF Trust Agreement on a parity therewith are included in the definition of Senior CTF Obligations. The pledge of Alternative Revenues to the Senior Notes under the Trust Agreement is subordinate to the pledge of a portion of the CTF, including Gasoline Tax receipts, to the Senior CTF Obligations. The 2010 CTF Bonds are being offered by the Commonwealth pursuant to a separate offering document.

### **The Subordinated Notes**

As part of the Accelerated Bridge Program, concurrently with the delivery of the 2010A Senior Notes, the Commonwealth expects to issue its Federal Highway Grant Anticipation Notes (Accelerated Bridge Program), 2010 Series A (the “Subordinated Notes”). The Subordinated Notes will be secured by a lien on the Federal Highway Reimbursements that is subordinate to the lien for the Senior Notes. Additional Subordinated Notes and Senior CTF Obligations are expected to be issued by the Commonwealth through fiscal year 2016 as part of the Accelerated Bridge Program. Additional Subordinated Notes may also be issued from time to time for other projects to the extent authorized by the Massachusetts Legislature. The Subordinated Notes are being offered by the Commonwealth pursuant to a separate offering document.

The above summary is intended only as a general introduction to the 2010A Senior Notes and does not purport to be comprehensive or definitive. For more information concerning the 2010A Senior Notes and the specific pledge and other provisions of the Trust Agreement and descriptions of the federal-aid highway program and the Commonwealth’s participation therein, prospective purchasers of the 2010A Senior Notes should examine the entirety of this Official Statement.

### **Purpose and Content of Official Statement**

This Official Statement describes the terms and use of the proceeds of and security for the 2010A Senior Notes. This introduction is subject in all respects to the additional information contained in this Official Statement, including Appendices A through E. Attached hereto as Appendix B is a summary of certain provisions of the Trust Agreement. Terms used in this Official Statement and not defined herein are defined in Appendix B. Appendix C attached hereto contains a Table of Refunded Notes. Appendix D attached hereto contains the proposed form of legal opinion of Bond Counsel with respect to the 2010A Senior Notes. Appendix E attached hereto contains the proposed form of the Commonwealth’s continuing disclosure undertaking to be included in the 2010A Senior Notes to facilitate compliance by the Underwriters with the requirements of paragraph (b)(5) of Rule 15c2-12 of the Securities and Exchange Commission. See *Continuing Disclosure*. All descriptions of documents contained in this Official Statement are only summaries and are qualified in their entirety by reference to each such document.

## **THE 2010A SENIOR NOTES**

### **General**

The 2010A Senior Notes will be dated the date of delivery and will bear interest from such date payable semiannually on June 15 and December 15 of each year, commencing June 15, 2011 (each an “Interest Payment Date”), until the principal amount is paid. The 2010A Senior Notes will mature on the dates and in the years and in the aggregate principal amounts, and shall bear interest at the rates per annum (calculated on the basis of a 360-day year of twelve 30-day months), as set forth on the inside cover page of this Official Statement. The Trustee will act as paying agent with respect to the 2010A Senior Notes. In such capacity, the Trustee is sometimes referred to herein as the “Paying Agent.”

*Book-Entry Only System.* The 2010A Senior Notes will be issued by means of a book-entry only system, with one note certificate for each maturity immobilized at The Depository Trust Company (“DTC”), New York, New York. The certificates will not be available for distribution to the public and will evidence ownership of the 2010A Senior Notes in principal amounts of \$5,000, or whole multiples thereof. Transfers of ownership will be effected on the records of DTC and its participants pursuant to rules and procedures established by DTC and its



participants. Interest and principal due on the 2010A Senior Notes will be paid to DTC or its nominee as registered owner of the 2010A Senior Notes. The record date for payments on account of the 2010A Senior Notes will be the last business day of the month preceding each June 15 and December 15. As long as the book-entry only system remains in effect DTC or its nominee will be recognized as the owner of the 2010A Senior Notes for all purposes, including notices and voting. The Commonwealth will not be responsible or liable for maintaining, supervising or reviewing the records maintained by DTC, its participants or persons acting through such participants. See *Book-Entry Only System*.

## Redemption

The 2010A Senior Notes will not be subject to redemption prior to their stated dates of maturity.

## Plan of Refunding

The 2010A Senior Notes are being issued for the purpose of refunding the Refunded Notes listed in Appendix C on their respective Redemption Dates. Upon the deposit of the proceeds of the 2010A Senior Notes with the Trustee and the satisfaction of certain conditions relating thereto specified in the Trust Agreement, the Refunded Notes will be legally defeased pursuant to the Trust Agreement. See *Appendix B—Summary of Certain Provisions of the Trust Agreement—Defeasance*.”

The Commonwealth, upon the delivery of the 2010A Senior Notes, will enter into a Refunding Escrow Agreement with the Escrow Agent. The Refunding Escrow Agreement will provide for the deposit of the net proceeds of the 2010A Senior Notes with the Escrow Agent in the Refunding Escrow Account, to be applied immediately upon receipt to purchase Government Obligations and/or Advance Refunded Municipal Bonds as defined in *Appendix B* (the “Defeasance Obligations”) and to fund, if needed, a cash deposit in such account. The Refunding Escrow Agreement will require that maturing principal of and interest on the Defeasance Obligations held under such Refunding Escrow Agreement, plus any initial cash deposit, be held in trust in such account and paid to the Commonwealth solely to pay the principal of and redemption premium, if any, due on the Refunded Notes on their respective Redemption Dates. According to the report described in *Verification of Mathematical Computations*, the Defeasance Obligations held under the Refunding Escrow Agreement will mature at such times and earn interest in such amounts that, together with any initial cash deposit, they will produce sufficient monies to redeem the Refunded Notes on their respective Redemption Dates.

## SOURCES AND USES OF FUNDS

Sources and uses of funds with respect to the 2010A Senior Notes are as follows:

Sources of Funds	
Principal of the Notes	\$ 380,530,000.00
Plus Net Original Issue Premium	<u>25,923,096.85</u>
Total:	\$406,453,096.85
Uses of Funds	
Deposit to Refunding Escrow Account	\$405,137,285.34
Underwriters' Discount	1,314,939.38
Additional Proceeds	<u>872.13</u>
Total:	\$406,453,096.85

## DEBT SERVICE REQUIREMENTS

The following table sets forth the principal of and interest to be paid with respect to the Prior Notes and the 2010A Senior Notes, taking into account the refunding of the Refunded Notes:

<u>Date</u>	<u>Prior Notes</u>			<u>2010A Senior Notes</u>			<u>Total Debt Service on Senior Notes</u>
	<u>Principal</u>	<u>Interest</u>	<u>Total</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>	
6/15/2011	---	\$8,283,125	\$8,283,125	\$45,065,000	\$6,562,612	\$51,627,612	\$ 59,910,737
12/15/2011	\$65,890,000	8,283,125	74,173,125	43,090,000	6,642,525	49,732,525	123,905,650
6/15/2012	---	6,635,875	6,635,875	47,425,000	6,427,075	53,852,075	60,487,950
12/15/2012	39,940,000	6,635,875	46,575,875	50,945,000	5,614,125	56,559,125	103,135,000
6/15/2013	---	5,637,375	5,637,375	70,400,000	4,720,225	75,120,225	80,757,600
12/15/2013	125,060,000	5,637,375	130,697,375	37,195,000	2,980,250	40,175,250	170,872,625
6/15/2014	---	2,510,875	2,510,875	8,455,000	2,053,925	10,508,925	13,019,800
12/15/2014	100,435,000	2,510,875	102,945,875	32,115,000	1,884,825	33,999,825	136,945,700
6/15/2015	---	---	---	45,840,000	1,108,800	46,948,800	46,948,800

## DEBT SERVICE COVERAGE

The following table sets forth estimated debt service coverage on the Senior Notes. Federal Highway Reimbursements are assumed to be \$560 million, based on guidance provided to the Commonwealth by the FHWA for the FFY 2011-2014 STIP (see *General Overview of Federal-Aid Highway Program* below). The FHWA notified the Commonwealth it should plan for \$600 million of OA during this timeframe, which includes \$40 million of redistributed funds; the coverage analysis below excludes these redistributed funds. Alternative Revenues – equal to 10 cents of the Gasoline Tax – utilize SFY 2010 actual receipts. Assuming only Federal Highway Reimbursements, estimated debt service coverage is 3.0x through final maturity. Assuming only 10 cents of the Gasoline Tax, estimated debt service coverage is 1.5x through final maturity. All projections and estimates are subject to change. The actual debt service coverage will likely vary from the amounts shown below as actual circumstances in the future will likely vary from the assumptions used for this Official Statement.

<u>SFY Ending June 30</u>	<u>Pledged Funds</u>		<u>Debt Service on Senior Notes</u>			<u>Estimated Debt Service Coverage</u>	
	<u>Federal Highway Reimbursements</u>	<u>10 Cents of the Gasoline Tax</u>	<u>Prior Notes<sup>1</sup></u>	<u>2010A Senior Notes</u>	<u>Total</u>	<u>Federal Highway Reimbursements Only</u>	<u>10 Cents of the Gasoline Tax Only</u>
2011	\$560,000,000	\$275,019,964	\$135,745,444	\$ 51,627,612	\$187,373,056	3.0x	1.5x
2012	560,000,000	275,019,964	80,809,000	103,584,600	184,393,600	3.0x	1.5x
2013	560,000,000	275,019,964	52,213,250	131,679,350	183,892,600	3.0x	1.5x
2014	560,000,000	275,019,964	133,208,250	50,684,175	183,892,425	3.0x	1.5x
2015	560,000,000	275,019,964	102,945,875	80,948,625	183,894,500	3.0x	1.5x

<sup>1</sup> Debt service on Prior Notes includes a full year's debt service for SFY 2011 (i.e., includes the December 15, 2010 payment).

## **Transfer**

So long as Cede & Co., as nominee for DTC, is the holder of record of the 2010A Senior Notes, beneficial ownership interests in the 2010A Senior Notes may be transferred only through a Direct Participant or Indirect Participant, as defined herein, and recorded on the book-entry system operated by DTC. In the event the book-entry only system is discontinued, 2010A Senior Note certificates will be delivered to the Beneficial Owners, which shall be transferable only upon the register for the 2010A Senior Notes maintained by the Paying Agent. Thereafter, the 2010A Senior Notes, upon surrender thereof at the Boston office of the Paying Agent with a written instrument of transfer satisfactory to the Paying Agent, duly executed by the holder thereof or such holder's duly authorized attorney, may be exchanged for an equal aggregate principal amount of 2010A Senior Notes of the same maturity and of authorized denominations.

In all cases in which the privilege of exchanging or transferring 2010A Senior Notes is exercised, the Commonwealth shall execute the 2010A Senior Notes and the Trustee shall authenticate and deliver the 2010A Senior Notes in accordance with the provisions of the Trust Agreement. For every such exchange or transfer of 2010A Senior Notes, the Paying Agent may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer. The Paying Agent shall not be required to make any such exchange or transfer of 2010A Senior Notes during the period beginning on the record date next preceding an interest or principal payment date and the interest or principal payment date.

## **SECURITY AND SOURCES OF PAYMENT FOR THE SENIOR NOTES UNDER THE TRUST AGREEMENT**

### **General**

The principal of and premium, if any, and interest on the Senior Notes, including the 2010A Senior Notes, and other obligations of the Commonwealth from time to time owing under the Trust Agreement (collectively, the "Senior Trust Agreement Obligations") are secured by a pledge of, and payable solely from, the Pledged Funds. The Pledged Funds consist of the following:

- (a) all federal highway construction reimbursements and other federal highway assistance ("Federal Highway Reimbursements") that the Commonwealth from time to time shall receive with respect to federally-aided highway construction projects under or in accordance with Title 23 of the United States Code or any successor program established under federal law (the "Federal-Aid Highway Program") and any other monies from time to time deposited in the Federal Highway Grant Anticipation Note Trust Fund of the Commonwealth established by Section 10 of the Act ("Federal Highway Grant Anticipation Note Trust Fund");
- (b) all amounts from time to time credited to the Federal Highway Grant Anticipation Note Trust Fund (excluding the Project Fund) and to the Funds and Accounts established under the Trust Agreement (excluding the Rebate Fund);
- (c) any amounts payable to the Commonwealth by a Hedge Provider pursuant to a Qualified Hedge Agreement relating to the Senior Notes; and
- (d) upon the occurrence and during the continuation of a True-Up Condition (defined below) the receipts derived by the Commonwealth from that portion of the Gasoline Tax equal to ten cents (10¢) per gallon, after the payment of the Senior CTF Obligations (the "Alternative Revenues").

As indicated above, the Alternative Revenues will be included in the Pledged Funds only during the continuation of a True-Up Condition and are subordinated to the Senior CTF Obligations. See "Pledge of Alternative Revenues" below.

The Senior Notes and the other Senior Trust Agreement Obligations are not general obligations of the Commonwealth, and the full faith and credit of the Commonwealth is not pledged to the payment of the Senior Notes or the other Senior Trust Agreement Obligations. The Commonwealth is not obligated to make any payments

with respect to the Senior Notes or the other Senior Trust Agreement Obligations except as specified in the Senior Notes and in the Trust Agreement, and the Commonwealth is not obligated to impose any taxes to satisfy the Senior Notes or the other Senior Trust Agreement Obligations.

The Act provides that the lien of the Trust Agreement on the Pledged Funds will be perfected by filing the Trust Agreement in the records of the State Treasurer. The Trust Agreement has been so filed. In the opinion of Bond Counsel, as the result of such filing, the lien of the Trust Agreement is valid and binding as against all persons or entities of any kind having claims of any kind in tort, contract or otherwise, irrespective of whether such persons or entities have notice thereof.

The lien of the Trust Agreement on the Federal Highway Reimbursements is limited to such monies when received by the Commonwealth and does not include a pledge of the right to receive such reimbursements or other assistance from the federal government. No person or entity, other than the Commonwealth, will be entitled to assert any claim against the federal government with respect to such reimbursements or other assistance.

As required by the Act, the Trust Agreement contains a covenant to the effect that, except to the extent necessary to pay Senior Trust Agreement Obligations due and payable in any SFY (as originally scheduled), no more than fifty percent (50%), or such other percentage as may be permitted by Massachusetts law, of the amount apportioned by law to the Commonwealth in any FFY with respect to the Federal-Aid Highway Program shall be applied in the SFY ending on June 30 of such FFY or in the SFY commencing on July 1st of such FFY to the payment of Senior Trust Agreement Obligations, including without limitation, the payment, redemption or defeasance prior to maturity of the principal of and interest on Senior Notes Outstanding. Any such use of Federal Highway Reimbursements also requires the concurrence of the Secretary of Administration and Finance and the Secretary of Transportation (collectively, the "Secretaries"). This provision limits the amount of Federal Highway Reimbursements that may be available in any year for any optional redemption or defeasance of Notes, although the percentage limitation may be modified or eliminated by future action of the Massachusetts Legislature without Senior Noteholder consent. Moreover, the Commonwealth makes no representation as to the likelihood of any optional redemption or defeasance of the Senior Notes or that it will not utilize other available funds, if any, for such purposes.

The Commonwealth has waived its sovereign immunity and consented to be sued on contractual obligations, including the Senior Notes and the Trust Agreement, and all claims with respect thereto. The application of the Pledged Funds other than the Alternative Revenues to satisfy the Senior Trust Agreement Obligations, including satisfaction of any judgment enforcing the Senior Trust Agreement Obligations, will not be subject to appropriation by the Massachusetts Legislature. However, application of the Alternative Revenues to pay Senior Trust Agreement Obligations will require appropriation, and certain other Pledged Funds (excluding Federal Highway Reimbursements) may be made available from time to time as the result of legislative appropriations, although the Commonwealth is not obligated to appropriate any such funds. Enforcement of a claim for payment of the Senior Trust Agreement Obligations may also be subject to the provisions of federal or state statutes, if any, hereafter enacted extending the time for payment or imposing other constraints upon enforcement, insofar as the same may be constitutionally applied.

Neither the Commonwealth nor the Federal Highway Grant Anticipation Note Trust Fund is eligible for protection from its creditors pursuant to Title 11 of the United States Code.

### **Funds and Accounts**

The Federal Highway Grant Anticipation Note Trust Fund was established by the Act. The Trust Agreement establishes within the Federal Highway Grant Anticipation Note Trust Fund a Revenue Account and a Project Fund. The Revenue Account is held and administered by the Trustee and constitutes part of the security for the Notes. The Act provides that all Federal Highway Reimbursements, any other funds hereafter appropriated to the Federal Highway Grant Anticipation Note Trust Fund, and investment earnings thereon and on the proceeds of the Notes issued pursuant to the Trust Agreement shall be held by the State Treasurer or designee as trustee of the Federal Highway Grant Anticipation Note Trust Fund and not on account of the Commonwealth and, as further set forth in the Act, may be expended without further appropriation for payment of Senior Trust Agreement

Obligations. The Act further provides that such funds are impressed with a trust for the benefit of the owners of the Senior Notes, including the 2010A Senior Notes.

Pursuant to the Trust Agreement, all Federal Highway Reimbursements received by the Commonwealth are required to be deposited within two business days of receipt by the Commonwealth into the Revenue Account. Also deposited into the Revenue Account will be such additional funds (other than Alternative Revenues), if any, as may from time to time be appropriated by the Massachusetts Legislature to the Federal Highway Grant Anticipation Note Trust Fund for the payment of principal of, and interest on, the Senior Notes and other Senior Trust Agreement Obligations.

The Trust Agreement also establishes the following Funds and Accounts, which are separate from the Federal Highway Grant Anticipation Note Trust Fund:

- (i) Redemption Fund;
- (ii) Debt Service Fund, including a June 15 Debt Service Payment Account, a December 15 Debt Service Payment Account and a Defeasance Account;
- (iii) Alternative Revenues Fund, including a Reserve Account and a Debt Service Liquidity Account;
- (iv) Note Related Costs Fund; and
- (v) Rebate Fund.

All these Funds and Accounts are held and administered by the Trustee and are included in the Pledged Funds securing the Senior Trust Agreement Obligations, except for the Rebate Fund. Any Alternative Revenues contained therein are available only during the continuation of a True-Up Condition provided the Massachusetts Legislature appropriates such funds for that purpose. Monies and securities held in the Rebate Fund are not available to pay the Senior Trust Agreement Obligations and do not constitute security therefor.

The *Redemption Fund* provides a depository for any funds, including Pledged Funds, not otherwise required by the Trust Agreement to be deposited or applied with respect to the Senior Notes, so that such funds may be used for the purposes of purchasing or optionally redeeming Senior Notes. Such use of Federal Highway Reimbursements without appropriation is limited by a provision of the Act described above. See “General.” In the event of a deficiency in the Debt Service Fund, any funds held in the Redemption Fund, other than monies held for Senior Notes with respect to which a notice of redemption has been given, shall be transferred to the applicable Account of the Debt Service Fund to the extent necessary to make up such deficiency.

The *Debt Service Fund* contains two accounts, the June 15 Debt Service Account and the December 15 Debt Service Account, for the accumulation of Pledged Funds for the purpose of paying scheduled principal and interest on the Senior Notes when due. Deposits to such Accounts are to be made as described below in “Funding of Senior Trust Agreement Obligations” and “Pledge of Alternative Revenues.” The Debt Service Fund also contains a Defeasance Account for the retention of funds and securities held for the purpose of paying defeased Prior Notes.

The *Alternative Revenues Fund* contains a Reserve Account for the receipt and retention of Alternative Revenues during the continuation of a True-Up Condition, which shall be transferred to the Debt Service Fund or to the State Treasurer as described below in “Pledge of Alternative Revenues.” The Debt Service Liquidity Account of the Alternative Revenues Fund holds funds and securities and/or a Reserve Credit Facility maintained to satisfy the Debt Service Liquidity Account Requirement as a debt service reserve for the Notes. Amounts in the Debt Service Liquidity Account are available, if needed, solely in the event that a True-Up Condition shall have occurred and be continuing. In connection with the issuance of the 1998A Notes, the Commonwealth obtained a Reserve Credit Facility in an amount in excess of the Debt Service Liquidity Account Requirement from MBIA Insurance Corporation (“MBIA Corp.”) and reinsured by National Public Finance Guarantee Corporation (“National”). The Original Trust Agreement is being amended at the time of the issuance of the 2010A Senior Notes to permit the

Trustee to continue to hold such Reserve Credit Facility notwithstanding that National does not meet the ratings criteria set forth in the Original Trust Agreement.

National is the reinsurer of the Reserve Credit Facility pursuant to the Amended and Restated Quota Share Reinsurance Agreement effective as of January 1, 2009, by and between MBIA and MBIA Insurance Corp. of Illinois, now known as National Public Finance Guarantee Corporation. National is an operating subsidiary of MBIA Inc., a New York Stock Exchange listed company that files periodic reports, financial statements and other information with the Securities and Exchange Commission (the "SEC") under File No. 1-9583. Copies of such reports, financial statements and other information can be accessed (i) over the Internet at (a) the SEC's web site at <http://www.sec.gov> and (b) MBIA Inc.'s web site at <http://www.mbia.com>, (ii) at the SEC's public reference room in Washington, D.C. and (iii) at no cost, upon request to National at its principal executive offices located at 113 King Street, Armonk, New York 10504 (telephone number (914) 765-3333).

The *Note Related Costs Fund* holds Pledged Funds to be used to pay fees, costs and other amounts included in the Senior Trust Agreement Obligations, other than debt service on the Senior Notes. Funds held in the Note Related Costs Fund are available to pay debt service on the Notes in the event of a deficiency in the Debt Service Fund.

The *Rebate Fund* holds amounts, if any, payable by the Commonwealth to the United States Treasury with respect to the Senior Notes pursuant to the arbitrage rebate requirements of Section 148 of the Internal Revenue Code of 1986, as amended. Amounts deposited in the Rebate Fund are not included in the Pledged Funds and are not available to pay debt service on the Senior Notes.

#### **Funding of Senior Trust Agreement Obligations**

Under the Trust Agreement, the Commonwealth will fund the June 15 and December 15 debt service payments on the Notes up to one year in advance of each payment to Noteholders, using the following procedure:

- No later than October 10 of each FFY, the State Treasurer will deliver to the Trustee a "Statement of Available Revenues" setting forth the following:
  - amount of Federal Highway Reimbursements expected to be received during current FFY;
  - existing deficiencies in Funds and Accounts under the Trust Agreement due and payable in current FFY; and
  - amount of Federal Highway Reimbursements expected to be used to pay Senior Trust Agreement Obligations during the next FFY.
  - The State Treasurer will revise the Statement of Available Revenues throughout the FFY based upon material revisions in the projections set forth therein.
- If there are any existing deficiencies in the Funds and Accounts, Federal Highway Reimbursements will be retained by the Trustee to the extent of such deficiencies to replenish such Funds and Accounts.
- Once the deficiencies, if any, have been replenished, if the amount of expected Federal Highway Reimbursements during the current FFY shown in the Statement of Available Revenues is equal to or greater than 120% of the projected Senior Trust Agreement Obligations for the next FFY, then the Trustee will apply such moneys as follows:
  - the Trustee will transfer the Federal Highway Reimbursements to the Commonwealth for any lawful purposes until the earlier of either December 15 or the date (the "December 15 Shortfall Date") when the expected Federal Highway Reimbursements for the current FFY falls below 120% of projected Senior Trust Agreement Obligations for the next FFY;

- beginning on the earlier of December 15 or the December 15 Shortfall Date, the Trustee shall retain an amount equal to next year's December 15 Debt Service Requirement;
- once next year's December 15 Debt Service Requirement is satisfied, the Trustee will transfer the Federal Highway Reimbursements to the Commonwealth for any lawful purposes until the earlier of either June 15 or the date (the "June 15 Shortfall Date") when the expected Federal Highway Reimbursements for the current FFY as set forth in the Statement of Available Revenues, less amounts received to date, falls below 120% of projected Senior Trust Agreement Obligations expected to be paid after December 15 for the next FFY;
- beginning on the earlier of June 15 or the June 15 Shortfall Date, the Trustee shall retain an amount equal to next year's June 15 Debt Service Requirement; and
- once next year's June 15 Debt Service Requirement is satisfied, the Trustee will transfer the Federal Highway Reimbursements to the Commonwealth for any lawful purposes.
- Once the deficiencies, if any, have been replenished, if the amount of expected Federal Highway Reimbursements during the current FFY shown in the Statement of Available Revenues is less than 120% of the projected Senior Trust Agreement Obligations for the next FFY, then the Trustee will apply such moneys as follows:
  - the Trustee will retain the Federal Highway Reimbursements thereafter received first in an amount equal to next year's December 15 Debt Service Requirement, second in an amount equal to next year's June 15 Debt Service Requirement, and thereafter to pay all other projected Senior Trust Agreement Obligations in accordance with the Statement of Available Revenues.
  - in the event a True-Up Condition occurs, Alternative Revenues are available to cover Senior Trust Agreement Obligations. See *Pledge of Alternative Revenues* below.
- Notwithstanding the foregoing, upon the occurrence and during the continuance of an Event of Default under the Trust Agreement, all Federal Highway Reimbursements will be retained by the Trustee.

For a more complete description of the foregoing, see *Appendix B - "Summary of Certain Provisions of the Trust Agreement —Revenue Account and —Covenants as to Pledged Funds and Federal Highway Grant Anticipation Note Trust Fund"*.

### **Advance Construction Balance Covenant**

Pursuant to the procedures followed by the FHWA in the administration of the Federal-Aid Highway Program, the Commonwealth may designate eligible highway construction projects for "Advance Construction" status. The aggregate amount so designated with respect to the Commonwealth and not yet converted into OA constitutes the Commonwealth's "Advance Construction Balance." Unless otherwise limited by federal law, the Commonwealth may at any time, provided sufficient OA is then available, convert any portion of its Advance Construction Balance to OA. The Commonwealth would then be entitled to immediate reimbursement of the federal share of amounts actually expended by the Commonwealth with respect to projects allocable to the Advance Construction Balance. The Commonwealth would be reimbursed for subsequent expenditures on such projects in the usual fashion. See *Appendix A-The Federal-Aid Highway Program—Operations and Commonwealth Participation in the Federal-Aid Highway Program*.

Under the Trust Agreement, the Commonwealth has covenanted that, except to the extent otherwise required by applicable federal law or regulations, it will not cause or permit its Advance Construction Balance at any date to be less than the principal amount of Senior Notes outstanding as of such date, after taking into account the principal amount of Senior Notes, if any, to be paid, defeased or redeemed as the result of the conversion on such date of a portion of the Advance Construction Balance to OA and taking into account any funds then on deposit in

the Debt Service Fund and Redemption Fund to be applied to pay the principal of any Senior Notes then outstanding, as certified by the State Treasurer to the Trustee at the time of such conversion.

As of September 30, 2010, the Commonwealth has an A/C balance of \$948 million. There will be \$711,855,000 aggregate principal amount of Senior Notes outstanding following the issuance of the 2010A Senior Notes.

By the concurrence of the Secretary of Transportation to the Trust Agreement, MassDOT covenants that it shall not cause or permit the Advance Construction Balance to be converted to OA without the prior written concurrence of the Secretary of Administration and Finance and the State Treasurer; provided, however, that such concurrence is not required if, after giving effect to such conversion, the portion of the remaining Advance Construction Balance that relates solely to projects under the Federal-Aid Highway Program on which the Commonwealth has already, as of the date of such conversion, paid or advanced funds and with respect to which the Commonwealth would be entitled to immediate reimbursement from the federal government if such portion of the Advance Construction Balance could be converted to OA, would be an amount at least equal to the principal amount of Senior Notes outstanding, without taking into account any payment, redemption or defeasance of Senior Notes as a result of such conversion. At the time of any conversion of the Advance Construction Balance that requires the concurrence of the Secretary of Administration and Finance and the State Treasurer, the State Treasurer shall deliver to the Trustee a certificate specifying the amount of the conversion and the amount, if any, of Federal Highway Reimbursements related thereto to be applied to the payment, redemption or defeasance of any portion of the principal of the Senior Notes outstanding, and, if applicable, the redemption date or effective date of defeasance of any Senior Notes outstanding. At the time of transfer of any of such Federal Highway Reimbursements to the Trustee, the State Treasurer will instruct the Trustee to deposit such Federal Highway Reimbursements directly into the applicable Debt Service Account, Redemption Fund or Defeasance Account.

### **Pledge of Alternative Revenues**

Not later than December 15 in each FFY, the State Treasurer, after consultation with the Secretaries, will determine and certify (a) the aggregate amount appropriated by law from the federal Highway Trust Fund for the purposes of carrying out the provisions of Title 23 of the United States Code with respect to federal-aid highway projects nationwide for the current FFY and (b) the Debt Service Coverage Ratio for the following SFY. If both the amount described in (a) above is less than \$17.1 billion and the Debt Service Coverage Ratio described in (b) above is less than 120%, then such combination of conditions shall constitute a "True-Up Condition." The aggregate amount appropriated annually by law from the Federal Highway Trust Fund has been substantially above \$17.1 billion since 1998; in FFY 2010 it was \$41.8 billion.

If a True-Up Condition shall have occurred, the Act requires the Governor of the Commonwealth to include in the proposed operating budget of the Commonwealth to be submitted to the Massachusetts Legislature (generally in January) for such succeeding SFY a recommendation to appropriate an amount equal to the Senior Trust Agreement Obligations to be due in such succeeding SFY less the sum of (x) the amount of any available funds on deposit in the Federal Highway Grant Anticipation Note Trust Fund, the Debt Service Fund and the Note Related Costs Fund as of the date of such certification, minus (y) the portion of such amount expected to be expended prior to the beginning of such succeeding SFY on Senior Trust Agreement Obligations due in the current SFY plus (z) any amount of Federal Highway Reimbursements expected to be received prior to the beginning of such succeeding SFY that will not be expended prior to the beginning of said SFY. At any time prior to the enactment of the budget of the Commonwealth with respect to such succeeding SFY, the State Treasurer, after consultation with the Secretaries, may report to the Governor and the Massachusetts Legislature changed circumstances that are material to the amount being recommended for appropriation.

If a True-Up Condition shall have occurred in any SFY, then (i) commencing in January of such SFY the Alternative Revenues received by the Commonwealth shall be deposited with the Trustee in the Reserve Account of the Alternative Revenues Fund until the amount in the Reserve Account shall equal the sum of (A) the December 15 Debt Service Requirement in the following SFY (less any amount available for such purpose on deposit in the December 15 Debt Service Account), and (B) all Senior Trust Agreement Obligations relating to the Senior Notes to be due and payable prior to December 15 in the following SFY (less any amounts available for such purpose on deposit in the Note Related Costs Fund, the Rebate Fund and the Debt Service Liquidity Account), and (ii)



commencing with July of the next following SFY the Alternative Revenues received by the Commonwealth shall be deposited with the Trustee in the Reserve Account; provided that notwithstanding any provision of the Trust Agreement to the contrary, in the event that the Trustee shall hold an amount under the Trust Agreement during any SFY at least equal to the Senior Trust Agreement Obligations due and payable during such SFY, which amount is available for paying such Senior Trust Agreement Obligations without any further appropriation or other legislative approval, then the State Treasurer shall no longer be required to pay Alternative Revenues to the Trustee with respect to the remainder of such SFY.

Alternative Revenues are subject to the prior lien of the Senior CTF Obligations, and will be included in the Pledged Funds only upon the occurrence and continuation of a True-Up Condition and will not be available to pay Senior Trust Agreement Obligations if Federal Highway Reimbursements are insufficient for such purpose under circumstances that do not involve a True-Up Condition or if the Massachusetts Legislature does not appropriate the Alternative Revenues for such purpose. The Massachusetts Legislature may, but is under no obligation to, from time to time appropriate Alternative Revenues or other funds for the purpose of paying Senior Trust Agreement Obligations. See *The Alternative Revenues*.

Alternative Revenues so deposited into the Reserve Account, to the extent appropriated for payment of Senior Trust Agreement Obligations in such SFY, shall be transferred to the Debt Service Fund and other Funds and Accounts under the Trust Agreement for the payment of such Senior Trust Agreement Obligations. Amounts remaining in the Reserve Account after all such Senior Trust Agreement Obligations have been provided for shall be transferred to the State Treasurer free and clear of the lien of the Trust Agreement.

In the event that funds other than Alternative Revenues are appropriated for the payment in full of such Senior Trust Agreement Obligations and are received by the Trustee and deposited in the appropriate Funds and Accounts maintained under the Trust Agreement, the Alternative Revenues thereafter shall be released to the State Treasurer free and clear of the lien of the Trust Agreement.

So long as any Senior Notes shall be outstanding, there shall be maintained in the Debt Service Liquidity Account an amount equal to ten percent (10%) of the maximum aggregate amount of scheduled payments of principal and interest becoming due in any SFY on all Senior Notes then outstanding; provided that the amount funded from proceeds of the Senior Notes in any event shall not exceed 125% of the average annual aggregate amount of scheduled payments of principal and interest becoming due in any SFY on all Senior Notes then outstanding. At the option of the Commonwealth, such requirement may be satisfied by a Reserve Credit Facility. So long as any True-Up Condition shall have occurred and be continuing, amounts in the Debt Service Liquidity Account shall be available to pay Senior Trust Agreement Obligations when due and shall be drawn upon for such purpose in the event of any deficiency in the amount available for such purpose in the Debt Service Fund, the Notes Related Costs Fund, the Redemption Fund and the Subordinated Debt Service Fund. The Trustee currently holds a Reserve Credit Facility issued by National in an amount in excess of the Debt Service Liquidity Account Requirement.

The Commonwealth has covenanted in the Trust Agreement that, so long as any Senior Notes shall remain outstanding or any Senior Trust Agreement Obligations shall remain unpaid in any SFY with respect to which a True-Up Condition has occurred and is continuing, unless and until an appropriation has been made or an amount is otherwise made available that is sufficient to pay the Senior Trust Agreement Obligations due during said SFY, none of the Alternative Revenues shall be applied to any use other than the payment of such Senior Trust Agreement Obligations, subject to the prior pledge of the Senior CTF Obligations.

The Trust Agreement provides that any provision of the Act creating covenants with Senior Noteholders shall be deemed a covenant with the Senior Noteholders only to the extent expressly provided in, and as limited by, the Trust Agreement.

#### **Closure of Lien of Trust Agreement; No Additional Notes**

Upon the issuance of the 2010A Senior Notes, the lien of the Trust Agreement will be closed, and the Commonwealth will not be permitted to issue Additional Notes thereunder (except for refunding notes). Additional Notes are not expected to be issued by the Commonwealth after the issuance of the 2010A Senior Notes.

## Amendments to the Trust Agreement

At the time of issuance of the 2010A Senior Notes, the Underwriters, as initial purchasers and owners of all of the 2010A Senior Notes, will consent to certain amendments outlined under *Summary of Certain Amendments to the Original Trust Agreement* on behalf of themselves, the holders of the Prior Notes and all subsequent holders of the Senior Notes. The Original Trust Agreement provides that any amendment of the Senior Notes and the Original Trust Agreement may be made with the consent of the registered owners of a majority in principal amount of the Senior Notes Outstanding at the time the consent is given. The Underwriters will constitute the registered owners of a majority in principal amount of the Senior Notes Outstanding upon the issuance of the 2010A Senior Notes.

### SUMMARY OF CERTAIN AMENDMENTS TO THE ORIGINAL TRUST AGREEMENT

At the time of issuance of the 2010A Senior Notes, the Original Trust Agreement will be amended and restated and the Underwriters will consent to certain amendments to the Original Trust Agreement. The following summarizes certain of the amendments. For further details of the amendments to the Trust Agreement, see *Appendix B—Summary of Certain Provisions of the Trust Agreement*.

- Subordination of Contingent Pledge of Gasoline Tax. Alternative Revenues will mean the receipts derived from a portion of the Gasoline Tax equal to ten cents (10¢) per gallon, after the payment of the Senior CTF Obligations. The pledge of the portion of the Gasoline Tax equal to ten cents (10¢) per gallon to such Senior CTF Obligations will be senior to the pledge of Alternative Revenues under the Trust Agreement. A portion of the Gasoline Tax is pledged to the Prior Special Obligation Bonds and the Gasoline Tax will be pledged to the 2010 CTF Bonds and other special obligation bonds issued by the Commonwealth from time to time. The Commonwealth's covenants, as amended, will provide that in any SFY with respect to which a True-Up Condition has occurred and is continuing, unless and until an appropriation has been made or an amount is otherwise made available that is sufficient to pay the Senior Trust Agreement Obligations due during said SFY, none of the Alternative Revenues shall be applied to any use other than the payment of such Senior CTF Obligations. The Trust Agreement will be further amended to provide that at least ten cents (10¢) per gallon of the Gasoline Tax shall remain free and clear of any superior or equal pledge, lien, charge or encumbrance thereon or with respect thereto, other than the pledge securing the Senior CTF Obligations.
- No Additional Senior Notes may be issued other than for refunding purposes. The lien of the Trust Agreement is being closed so that no additional Senior Notes, other than Refunding Notes, may hereafter be issued. Any obligations hereafter issued by the Commonwealth that are secured by Federal Highway Reimbursements, including the Subordinated Notes, will be secured on a basis subordinate to the Senior Notes. All Senior Notes are scheduled to mature by June 15, 2015.
- Reserve Credit Facility definition revised. The definition of "Reserve Credit Facility" is being revised to permit the Trustee to continue to hold the policy in the Debt Service Liquidity Account issued by MBIA Corp. and reinsured by National in an amount in excess of the Debt Service Liquidity Account Requirement, notwithstanding that the ratings of National have been reduced below the level that would be required if the Commonwealth were seeking a new policy. The Debt Service Liquidity Account is not available until after the occurrence and continuance of a True-Up Condition.

The summary of the Trust Agreement set forth in Appendix B reflects the amendments that will be consented to by the Underwriters. A complete copy of the Amended and Restated Trust Agreement blacklined to show the changes from the Original Trust Agreement is available from Bond Counsel. See *Availability of Other Information*.

### GENERAL OVERVIEW OF FEDERAL-AID HIGHWAY PROGRAM

The process of financing the Federal-Aid Highway Program begins with congressional approval of a federal highway act, the most recent reauthorization of which is the SAFETEA-LU, which was originally enacted in 2005. SAFETEA-LU expired on September 30, 2009, which was the end of FFY 2009, yet, as of the date of this Official Statement, has been extended through December 31, 2010. See *Appendix A – The Federal-Aid Highway Program – Reauthorization Risk*.

The amounts authorized in the federal highway acts serve as notice to the states of the size of the Federal-Aid Highway Program, which gives the states the ability to start their planning process through the life of the reauthorization. It permits the states to assign the funds to particular projects for planning purposes without the funds having yet been annually appropriated. Subsequent appropriations acts are necessary for the actual payment of the moneys to the states.

Annually, Congress sets the upper limits on that year's authorizations from the Federal-Aid Highway Program, and the FHWA, after making certain administrative deductions and set asides, apportionments, or distributes, the program funds to the states using federally mandated formulas and procedures. The annual federal apportionment generally occurs on the first day of the FFY (October 1) and cannot be taken away except by lapsing (generally, after approximately four years) or through a congressional action. As more particularly detailed herein under *Commonwealth Participation in the Federal-Aid Highway Program*, since 1998, the year of the first issuance by the Commonwealth of Prior Federal Highway Notes, annual apportionments to the Commonwealth have not been less than \$504 million and, since 2005, have not been less than \$628.4 million.

Because of the multi-year authorization and multi-year availability of funds associated with the Federal-Aid Highway Program, federal limitations are placed on the amount of funds that a state can obligate within a given FFY – the OA – which applies to the total obligations of apportioned funds within a given year, regardless of the year in which the funds were apportioned and carry-forward amounts from previous years' unused amounts. The ceiling on annual OA does not take back authorized funds already apportioned to the states, it only limits the annual rate of obligation. As more particularly detailed herein under *Commonwealth Participation in the Federal-Aid Highway Program*, since 1998, annual OA to the Commonwealth has not been less than \$481.4 million and, since 2005, has not been less than \$604.9 million.

The amount of the OA is included in the federal annual appropriations act for payment purposes. Historically, FHWA has reimbursed the states for all appropriations, using other federal moneys during recent periods when the federal HTF did not have sufficient funds to cover the reimbursements. Since 1999, the Commonwealth has received not less than \$449.6 million annually in Federal Highway Reimbursements.

States can seek approval from FHWA of A/C status for a project, which allows the state to begin a project and pay it from the state's own funding sources, subject to later reimbursement when the OA becomes available. A/C approval allows the states to further leverage their future expected receipt of Federal-Aid Highway Program funds. As of September 30, 2010, the Commonwealth's A/C balance was \$948 million.

Generally, projects are required to be included in the STIP before work can be authorized and initiated using Federal-Aid Highway Program funds. The Commonwealth and its ten metropolitan transportation planning organizations ("MPOs") have a STIP for FFY 2011-2014 covering approximately \$600 million annually in projects, approximately 70% of which are statewide projects and the remaining approximately 30% of which are local. The assumed \$600 million of annual OA is based on guidance provided by the FHWA.

Annually, when the Commonwealth receives its FHWA apportionment, it first sets aside the projected debt service payments on outstanding debt secured by Federal Highway Reimbursements, then the amount of A/C projects' cash flow, and is able to obligate, or contractually commit, to other projects the remaining apportionment. As a matter of policy, the Commonwealth currently uses grant anticipation note proceeds for A/C projects, leaving remaining moneys for other projects.

For additional detail on the Federal-Aid Highway Program, see Appendix A.

## **COMMONWEALTH PARTICIPATION IN THE FEDERAL-AID HIGHWAY PROGRAM**

The flow of Federal Highway Reimbursements into the Federal Highway Grant Anticipation Note Trust Fund will depend on several factors, most notably, the amount of funding provided to Massachusetts by the federal government under the Federal-Aid Highway Program and the Commonwealth's ability to use such funding. The sections below summarize the implementation and management of the Federal-Aid Highway Program in the Commonwealth, the recent history of funding levels provided to the Commonwealth, the Commonwealth's use of

such funding, and the anticipated funding levels that could be made available to Massachusetts under successor legislation to SAFETEA-LU.

### **Program Implementation and Management**

Implementation of the Federal-Aid Highway Program involves three key steps: (i) budgeting; (ii) planning and programming; and (iii) fiscal management and reimbursement.

*Budgeting.* In Massachusetts, MassDOT's Capital Budget Division (the "Capital Budget Division") and Office of Transportation Planning ("OTP") have primary responsibility for budgeting transportation needs.

*Planning and Programming.* The Capital Budget Division and OTP coordinate transportation planning and programming activities for MassDOT. At the state level, MassDOT and the Massachusetts Port Authority prepare plans. The Commonwealth's plans are then reviewed by U.S. Environmental Protection Agency ("EPA") and the FHWA at the federal level.

The long-range planning requirements are followed in Massachusetts in both a state and a regional planning process. In 1995, Massachusetts released its 25-year long-range plan, titled *Accessing the Future*. This document identifies the Commonwealth's transportation policies, goals and initiatives through 2020, based on anticipated levels of state and federal transportation funding, and is not intended to provide a project-by-project description of the state's future transportation investments. The plan was prepared by Mass Highway (predecessor to MassDOT) and OTP, in coordination with several agencies and organizations including the FHWA, the Executive Office of Environmental Affairs (predecessor to the Executive Office of Energy and Environmental Affairs) and the Massachusetts Association of Regional Planning Authorities ("MARPA").

The Massachusetts STIP is developed annually, and covers a four-year period. STIP development is coordinated by the Capital Budget Division and OTP. Initially, the Capital Budget Division and OTP project available state and federal funding for the next five years, based on anticipated federal apportionments and anticipated state transportation funding. This total is then reduced to account for regionally significant projects and programs. After such needs have been determined, formulas established by MARPA are applied to the remaining balance in order to calculate programming targets for each Regional Planning Association. Only after this process is complete can a project formally be considered part of the Commonwealth's transportation funding plan.

*Fiscal Management and Reimbursement.* In Massachusetts, the reimbursement process is coordinated by the Capital Budget Division and performed by the Office of Fiscal Operations within MassDOT.

The fiscal management group within MassDOT has day-to-day responsibility for paying project bills and for securing prompt reimbursement for the federal share of those bills. A computer-based project accounting, reporting and billing system is used to track encumbrances and expenditures for all projects, including highway projects, administered by the Commonwealth. This system is called the Massachusetts Management Accounting and Reporting System ("MMARS"). Within MMARS, an initial encumbrance for each project is established, based on the total amount of revenues specified in the project agreement. As the project is implemented, MMARS is used to track all expenditures and remaining encumbrance amounts. For federal-aid highway projects for which the Commonwealth must seek reimbursement for expenditures, MMARS generates federal billing information, and tracks the federal and Commonwealth sources of funding in detail. The federal-aid billing capabilities of MMARS are designed specifically for the needs of MassDOT, while satisfying the cost accumulation and billing requirements of the FHWA.

Reimbursement requests are submitted weekly and reimbursements are made by wire transfer generally within four days. The Commonwealth's system and management are highly automated, leading to a routine, weekly flow of Federal Highway Reimbursements based on actual spending on approved projects. To the best of its knowledge, the Commonwealth has never not received Federal Highway Reimbursements that have been requested.

## Funding History

*Role of OA.* As noted in the previous section, the culmination of the federal authorization and appropriation process for the Federal-Aid Highway Program is the provision of OA to a state. OA, which is apportioned to states on an annual basis, sets the upper limit on the federal government's commitment to pay, through reimbursements, its share of eligible expenditures on approved projects. Thus, current year OA plus prior years' OA obligated but not yet expended determines the maximum amount of federal highway assistance that a state may receive under the Federal-Aid Highway Program. Although annual OA is not a direct representation of the amount of reimbursements a state will receive under the Federal-Aid Highway Program in a given year (e.g., due to lags in spending), OA levels will determine over time the amount of reimbursements that a state may receive.

*OA Provided to Massachusetts.* Since the advent of the multi-year federal authorization acts in 1982, Massachusetts has received substantial funding through the Federal-Aid Highway Program. The table below details the amount of OA made available to the Commonwealth from FFY 1991 through FFY 2010 and the amount of such OA actually obligated by the Commonwealth. As shown, the amount of annual OA provided to Massachusetts under the Federal-Aid Highway Program averaged \$702.4 million per year during this period. The amount of OA made available varied substantially, ranging from \$714.2 million to \$1.1 billion from FFY 1991 through FFY 1997; ranging from \$481.4 million to \$579.3 million from FFY 1998 through FFY 2003; and ranging from \$591.3 million to \$655.0 million from FFY 2004 to FFY 2010, with the exception of \$1.1 billion made available in FFY 2009, which included ARRA funds. The increased levels for FFY 1991 to 1997 resulted, in large part, from targeted aid for the completion of the Interstate Highway System, for which the CA/T Project was eligible. The funding levels available to Massachusetts between FFY 1991 and FFY 1995 and in FFY 2009 are not indicative of future levels.

### The Commonwealth of Massachusetts History of OA and Actual Obligations (in millions)

FFY	Formula OA	Non-Formula OA <sup>(1)</sup>	Total OA	Actual Obligations
1991	\$1,091.4	\$0.0	\$1,091.4	\$1,091.4
1992	687.6	45.6	733.2	733.2
1993	889.8	54.4	944.2	944.2
1994	984.5	55.5	1,040.0	1,040.0
1995	718.8	36.9	755.7	755.7
1996	696.0	33.9	729.9	729.9
1997	672.5	41.7	714.2	714.2
1998	559.7	19.6	579.3	579.3
1999	390.4	137.2	527.6	527.6
2000	400.3	81.1	481.4	481.4
2001	434.5	80.8	515.3	518.9
2002	489.5	72.6	562.1	562.1
2003	467.9	68.7	536.6	533.4
2004	528.7	62.6	591.3	563.8
2005	507.2	97.7	604.9	550.9
2006	531.0	102.2	633.2	567.9
2007	554.0	77.9	631.9	585.0
2008	548.1	75.2	623.3	590.0
2009	569.4	527.7 <sup>(2)</sup>	1,097.1	883.2
2010	625.1	29.9	655.0	813.4
Average	617.3	85.1	702.4	688.3

SOURCES: Massachusetts Federal Aid and Program Office (FAPO).

- (1) Includes amounts attributable to Redistribution, Minimum Guarantee, High Priority Funds and 1999 Omnibus Reconciliation Act (\$100.0 million in 1999 only).
- (2) FFY 2009 Non-Formula OA includes \$437.9 million attributable to ARRA.

*Actual Obligations.* Since FFY 1991 the Commonwealth has used virtually all of the formula OA provided by the federal government, including redistribution/bonuses of OA resulting from under-utilization in other states. This is, in large part, the result of funding requirements for the CA/T Project and the Commonwealth's extensive statewide road and bridge program. Going forward, the Commonwealth anticipates to continue using its full formula OA.

*Reimbursements.* The amount of Federal Highway Reimbursements received by the Commonwealth has averaged approximately \$552.5 million per year since FFY 1999. As noted, cash reimbursements tend to lag behind the commitment of OA. Reimbursements received by the Commonwealth during the period shown tend to track the use of OA, albeit on a delayed basis.

*SAFETEA-LU.* The total apportionments which Massachusetts received during the SAFETEA-LU period (FFY 2005 through 2010), not including any future redistribution funds, was \$4.261 billion, including ARRA funds, for an annual average of \$710.2 million. The following chart shows the SAFETEA-LU apportionments for Massachusetts:

**SAFETEA-LU Apportionments  
(in millions)**

FFY	2005	2006	2007	2008	2009	2010	Total	Average
Apportionments-Formula	\$522.7	\$520.5	\$561.6	\$552.1	\$563.6	\$621.5	\$3,342.0	\$557.0
Minimum Guarantee/ Equity Bonus	28.6	28.6	13.2	10.9	11.8	11.8	104.9	17.5
High Priority/ DEMO/Other	77.1	89.4	70.4	68.2	64.6	6.7	376.4	62.7
ARRA	–	–	–	–	437.9	–	437.9	–
Total Apportionments	\$628.4	\$638.5	\$645.2	\$631.2	\$1,077.9	\$640.0	\$4,261.2	\$710.2

SOURCE: Massachusetts FAPO.

While the Commonwealth believes that sufficient Federal Highway Reimbursements will be received during the term of the Senior Notes to pay the principal of and interest due on the Senior Notes and all other Senior Trust Agreement Obligations, various factors beyond the control of the Commonwealth may affect its ability to do so, including, without limitation, subsequent reauthorizations of SAFETEA-LU, federal budgetary limitations and other possible changes in the Federal-Aid Highway Program that cannot now be anticipated. However, in the case that Federal Highway Reimbursements are not sufficient, Alternative Revenues may be available for debt service upon the occurrence of a True-Up Condition. See Appendix A-*The Federal-Aid Highway Program—History*.

*Equity Provisions.* Since FFY 1982, all Federal-Aid Highway Program authorization acts have included so-called equity provisions which assure states that they will receive a certain minimum percentage of the federal transportation related user taxes collected in that state and paid into the Highway Account of the HTF. SAFETEA-LU includes such an equity provision and sets the minimum percentage at 92% of their proportional share of apportioned programs, based on the state's percentage contribution to HTF receipts through FFY 2010.

If future Federal-Aid Highway Program authorization acts provide funding levels for Massachusetts similar to those authorized under SAFETEA-LU, such assistance, if fully utilized, would substantially exceed the anticipated maximum annual debt service on the Senior Notes (after giving effect to the issuance of the 2010A Senior Notes and the refunding of the Refunded Notes) of approximately \$188 million. Similarly, if the equity provisions noted above remain in place, the level of Massachusetts contributions into the Highway Account of the HTF should ensure that funding provided to Massachusetts under the Federal-Aid Highway Program would exceed the debt service requirements of the Senior Notes. However, future funding and the continuance of the equity provisions will be subject to future Congressional action, and there can be no assurance as to the level of such funding or the continuation of the equity provisions.

## Future Utilization of Federal Highway Assistance

Under the Federal-Aid Highway Program, as projects are approved by the FHWA, the aggregate dollar amount of each state contract relating thereto is obligated against the remaining annual amount of OA still available to that state. The state then pays the amounts owed under each contract as the work progresses and receives reimbursement from the federal government for the federal share of the total costs. The aggregate amount of reimbursements received by a state in any year is not necessarily equal to the state's apportionment for such year. Many projects and contracts extend over a number of years; the aggregate amount made available to a state in any one year, if fully obligated, may be received as reimbursement over a longer period of time relating to the actual pace of construction. The Commonwealth expects that, as a result of its extensive statewide road and bridge program and the Accelerated Bridge Program, it will have sufficient federally-eligible project expenditures to be able to utilize all the federal highway assistance that will be made available to the state.

In addition, the Commonwealth has made extensive use of A/C status under the Federal-Aid Highway Program. By utilizing A/C status, the Commonwealth may pre-qualify projects and expenditures thereon for federal reimbursement, subject to the availability of future OA and the continued inclusion of the relevant projects on the STIP. The Commonwealth estimates that as of September 30, 2010, \$948 million in Commonwealth project costs were so qualified. Such costs, when spent, should ensure that the Commonwealth will be able to draw down future federal reimbursements when available. In connection with the Senior Federal Highway Grant Anticipation Note Program, the Commonwealth covenants to maintain an A/C Balance at least equal to the principal amount of Senior Notes Outstanding, to help ensure that it will be able to draw down federal funds to meet debt service funding requirements.

## THE ALTERNATIVE REVENUES

The Prior Notes were issued under the Original Trust Agreement with a contingent pledge of Alternative Revenues consisting of ten cents (10¢) per gallon of the Gasoline Tax, in the event of a True-Up Condition. Upon the issuance of the 2010A Senior Notes, the definition of Alternative Revenues will be amended to mean the receipts derived from a portion of the Gasoline Tax equal to ten cents (10¢) per gallon, *after* the payment of the Senior CTF Obligations. As a result of the amendment, the pledge of Alternative Revenues to the Senior Notes will be *subordinate* to the pledge of Gasoline Tax receipts credited to the Commonwealth Transportation Fund to the Senior CTF Obligations. See *Security and Sources of Payment for the Senior Notes Under the Trust Agreement—Amendments to the Trust Agreement*.

Under the Trust Agreement as amended, the Alternative Revenues consist of the receipts derived from ten cents (10¢) per gallon of the Commonwealth Gasoline Tax and credited to the Commonwealth Transportation Fund, after the payment of the Senior CTF Obligations. If a True-Up Condition shall occur and be continuing, the Trust Agreement requires the Trustee to promptly notify the Senior CTF Trustee of the occurrence of a True-Up Condition. Thereafter, the Alternative Revenues (after the payment of Senior CTF Obligations) received by the Commonwealth shall be deposited with the Trustee in the Reserve Account until the amount in the Reserve Account shall equal the debt service requirement and all Senior Trust Agreement Obligations for the following SFY. See *Security and Sources of Payment for the Senior Notes Under the Trust Agreement—Pledge of Alternative Revenues*. Under current law, the Alternative Revenues may not be applied to the payment of the Senior Trust Agreement Obligations unless appropriated for such purpose by the Massachusetts Legislature. If no appropriation is made, the Alternative Revenues are unavailable for other purposes.

The Commonwealth Gasoline Tax is imposed on sales of gasoline by distributors. Chapter 64A sets the rate of Gasoline Tax per gallon at twenty-one cents (21¢) per gallon. Under current law, 99.85% of the Gasoline Tax is credited to the Commonwealth Transportation Fund. Calculated as a percentage of the tax rate of twenty-one cents (21¢) per gallon, the amount so credited will equal twenty and nine thousand six hundred eighty-five ten thousandths cents (20.9685¢) per gallon. Of this amount, six and eighty-six hundredths (6.86¢) cents per gallon are currently pledged to secure the Prior Special Obligation Bonds. Concurrently with the issuance of the 2010A Senior Notes, the Commonwealth expects to issue its 2010 CTF Bonds to be secured by a pledge of certain monies in the Commonwealth Transportation Fund, including twenty and nine thousand six hundred eighty-five ten thousandths cents (20.9685¢) per gallon of the Commonwealth's Gasoline Tax, other motor fuels excises and certain fees for motor vehicle licensing and registration.

A portion equal to ten cents (10¢) per gallon of the Commonwealth Gasoline Tax collections for FY 1998 through FY 2010 was as follows:

<u>FY Ending</u>	<u>Amount</u>	<u>FY Ending</u>	<u>Amount</u>
June 30, 1998	\$260,492,227	June 30, 2005	\$286,017,685
June 30, 1999	267,884,799	June 30, 2006	281,179,688
June 30, 2000	272,894,866	June 30, 2007	283,707,856
June 30, 2001	275,162,567	June 30, 2008	283,939,943
June 30, 2002	279,237,769	June 30, 2009	275,866,651
June 30, 2003	283,134,708	June 30, 2010	275,019,964
June 30, 2004	286,265,173		

SOURCES: Executive Office for Administration and Finance, Office of the State Treasurer and Receiver-General.

The Commonwealth Gasoline Tax collected in each calendar month is credited to the appropriate Commonwealth fund or account, including a portion equal to 99.85% thereof to the Commonwealth Transportation Fund, in the early part of the following calendar month.

In the Act and the Trust Agreement, the Commonwealth has covenanted with respect to the Alternative Revenues as follows:

- (a) in any SFY with respect to which a True-Up Condition has occurred and is continuing, unless and until an appropriation has been made or an amount is otherwise made available which is sufficient to pay the Senior Trust Agreement Obligations due during such SFY, none of the Alternative Revenues shall be applied to any use other than the payment of Senior Trust Agreement Obligations other than any amount of Gasoline Tax pledged to the Senior CTF Obligations; and
- (b) at least ten cents (10¢) per gallon of the Commonwealth Gasoline Tax shall remain free and clear of any superior or equal pledge, lien, charge or encumbrance thereon or with respect thereto (other than the lien of the Trust Agreement and the lien of the Senior CTF Obligations) and will remain credited to the Commonwealth Transportation Fund, except as permitted by the Trust Agreement; provided, however, that any such funds shall be available for appropriation in any SFY for any other lawful purpose unless the State Treasurer shall have certified that a True-Up Condition has occurred and is continuing.

The Trust Agreement provides that any provision of the Act creating covenants with Senior Noteholders shall be deemed a covenant with the Noteholders only to the extent expressly provided in, and limited by, the Trust Agreement.

### **COMMONWEALTH PARTICIPANTS**

The State Treasurer may issue Senior Notes at the request of the Governor pursuant to the Act. The giving of the certifications required to determine the management of Federal Highway Reimbursements and the existence of and actions in the event of the occurrence of a True-Up Condition is to be done by the State Treasurer with the written concurrence of and after consultation with the Secretaries. Brief descriptions of the general responsibilities of these officials follow.

*State Treasurer.* The State Treasurer has four primary statutory responsibilities: (i) the collection of all state revenues (other than small amounts of funds held by certain agencies); (ii) the management of both short-term and long-term investments of Commonwealth funds (other than the state employee and teacher pension funds), including all cash receipts; (iii) the disbursement of Commonwealth monies and oversight of reconciliation of the state's accounts; and (iv) the issuance of all debt obligations of the Commonwealth, including notes, commercial paper and long-term bonds.



*Secretary of Administration and Finance.* The Secretary of Administration and Finance acts as the Governor's chief fiscal officer and administers the Executive Office for Administration and Finance. The activities of this Executive Office fall within five broad categories: (i) administrative and fiscal supervision, including supervision of the implementation of the Commonwealth's budget and monitoring of all agency expenditures during the fiscal year; (ii) enforcement of the Commonwealth's tax laws and collection of tax revenues through the Department of Revenue for remittance to the State Treasurer; (iii) human resource management, including administration of the state personnel system, civil service system and employee benefit programs, and negotiations of collective bargaining agreements with certain of the Commonwealth's public employee unions; (iv) capital facilities management, including coordinating and overseeing the construction, management and leasing of all state facilities; and (v) administration of general services, including information technology services.

*Secretary of Transportation.* The Secretary of Transportation administers MassDOT, which is the coordinating state agency for the Federal-Aid Highway Program and includes the Division of Highways. MassDOT owns and operates the Commonwealth's transportation systems and is responsible for the construction, maintenance and oversight of roads, bridges and other transportation assets.

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

The Depository Trust Company ("DTC"), New York, NY, will act as securities depository for the 2010A Senior Notes. The 2010A Senior Notes will be issued in fully-registered form 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 2010A Senior Note certificate will be issued for each maturity thereof, 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 securities deposited with DTC must be made by or through Direct Participants, which will receive a credit for such securities on DTC's records. The ownership interest of each actual purchaser of each security deposited with DTC ("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 securities deposited with DTC 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 securities deposited with DTC, except in the event that use of the book-entry system for such securities is discontinued.

To facilitate subsequent transfers, all securities 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 securities 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 securities deposited with it; DTC's records reflect only the identity of the Direct Participants to whose accounts such securities 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.

Neither DTC nor Cede & Co. (nor such other DTC nominee) will consent or vote with respect to securities deposited with it unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the issuer of such securities or its paying agent 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 the securities are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal and interest payments on securities deposited with DTC 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 issuer of such securities or its paying agent, on the 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 (nor its nominee), the issuer of such securities or its paying agent, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the issuer of such securities or its paying agent, 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 securities held by it at any time by giving reasonable notice to the issuer of such securities or its paying agent. Under such circumstances, in the event that a successor depository is not obtained, physical certificates are required to be printed and delivered to Beneficial Owners.

The Commonwealth may decide to discontinue use of the system of book-entry only transfers through DTC (or a successor securities depository). In that event, physical certificates will be printed and delivered to Beneficial Owners.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Commonwealth believes to be reliable, but the Commonwealth takes no responsibility for the accuracy thereof.

## **LITIGATION**

No litigation is pending or, to the knowledge of the Attorney General of the Commonwealth threatened against or affecting the Commonwealth seeking to restrain or enjoin the execution and delivery of the Trust Agreement or the issuance, sale or delivery of the 2010A Senior Notes or in any way contesting or affecting the validity of the 2010A Senior Notes, the right of the Commonwealth to receive Federal Highway Reimbursements or to collect the Alternative Revenues or the pledge of the Pledged Funds to secure any of the Senior Notes as provided in the Trust Agreement.

## **TAX EXEMPTION**

### **Federal Income Taxes**

The Internal Revenue Code of 1986, as amended (the “Code”), imposes certain requirements that must be met subsequent to the issuance and delivery of the 2010A Senior Notes for interest thereon to be and remain excluded from gross income for Federal income tax purposes. Noncompliance with such requirements could cause the interest on the 2010A Senior Notes to be included in gross income for Federal income tax purposes retroactive to the date of issue of the 2010A Senior Notes. Pursuant to the Tax Certificate of the Commonwealth dated the date of delivery of the 2010A Senior Notes (the “Tax Certificate”), the Commonwealth has covenanted to comply with the applicable requirements of the Code in order to maintain the exclusion of the interest on the 2010A Senior Notes from gross income for Federal income tax purposes pursuant to Section 103 of the Code. In addition, the Commonwealth has made certain representations and certifications in the Tax Certificate. We have not independently verified the accuracy of those representations and certifications.

In the opinion of Nixon Peabody, LLP, Bond Counsel, under existing law and assuming compliance with the aforementioned covenant, and the accuracy of certain representations and certifications made by the Commonwealth described above, interest on the 2010A Senior Notes is excluded from gross income for Federal income tax purposes under Section 103 of the Code. Bond Counsel is also of the opinion that such interest is not treated as a preference item in calculating the alternative minimum tax imposed under the Code with respect to individuals and corporations. Interest on the 2010A Senior Notes is, however, included in the adjusted current earnings of certain corporations for purposes of computing the alternative minimum tax imposed on such corporations.

### **State Taxes**

Bond Counsel is also of the opinion that, under existing law, interest on the 2010A Senior Notes is exempt from Massachusetts personal income taxes, and the 2010A Senior Notes are exempt from Massachusetts personal property taxes. Prospective purchasers of the 2010A Senior Notes should be aware, however, that the 2010A Senior Notes are included in the measure of Massachusetts estate and inheritance taxes, and the 2010A Senior Notes and the interest thereon are included in the measure of certain Massachusetts corporate excise and franchise taxes. Bond Counsel expresses no opinion as to other Massachusetts or local tax consequences arising with respect to the 2010A Senior Notes nor as to the taxability of the 2010A Senior Notes or the income therefrom under the laws of any state other than Massachusetts.

### **Original Issue Premium**

The 2010A Senior Notes are being offered at prices in excess of their principal amounts. An initial purchaser with an initial adjusted basis in a 2010A Senior Note in excess of its principal amount will have amortizable bond premium which is not deductible from gross income for federal income tax purposes. The amount of amortizable bond premium for a taxable year is determined actuarially on a constant interest rate basis over the term of each 2010A Senior Note based on the purchaser’s yield to maturity (or, in the case of 2010A Senior Notes callable prior to their maturity, over the period to the call date, based on the purchaser’s yield to the call date and giving effect to any call premium). For purposes of determining gain or loss on the sale or other disposition of a 2010A Senior Note, an initial purchaser who acquires such obligation with an amortizable bond premium is required to decrease such purchaser’s adjusted basis in such 2010A Senior Note annually by the amount of amortizable bond premium for the taxable year. The amortization of bond premium may be taken into account as a reduction in the amount of tax-exempt income for purposes of determining various other tax consequences of owning such 2010A Senior Note. Owners of the 2010A Senior Notes are advised that they should consult with their own advisors with respect to the state and local tax consequences of owning such 2010A Senior Notes.

### **Ancillary Tax Matters**

Ownership of the 2010A Senior Notes may result in other federal tax consequences to certain taxpayers, including, without limitation, certain S corporations, foreign corporations with branches in the United States,

property and casualty insurance companies, individuals receiving Social Security or Railroad Retirement benefits, and individuals seeking to claim the earned income credit. Ownership of the 2010A Senior Notes may also result in other federal tax consequences to taxpayers who may be deemed to have incurred or continued indebtedness to purchase or to carry the 2010A Senior Notes; for certain bonds issued during 2009 and 2010, the American Recovery and Reinvestment Act of 2009 modifies the application of those rules as they apply to financial institutions. Prospective investors are advised to consult their own tax advisors regarding these rules.

Commencing with interest paid in 2006, interest paid on tax-exempt obligations such as the 2010A Senior Notes is subject to information reporting to the Internal Revenue Service (the “IRS”) in a manner similar to interest paid on taxable obligations. In addition, interest on the 2010A Senior Notes may be subject to backup withholding if such interest is paid to a registered owner that (a) fails to provide certain identifying information (such as the registered owner’s taxpayer identification number) in the manner required by the IRS, or (b) has been identified by the IRS as being subject to backup withholding.

Bond Counsel is not rendering any opinion as to any Federal tax matters other than those described in the opinion attached as Appendix D. Prospective investors, particularly those who may be subject to special rules described above, are advised to consult their own tax advisors regarding the federal tax consequences of owning and disposing of the 2010A Senior Notes, as well as any tax consequences arising under the laws of any state or other taxing jurisdiction.

### **Changes in Law and Post Issuance Events**

Legislative or administrative actions and court decisions, at either the federal or state level, could have an adverse impact on the potential benefits of the exclusion from gross income of the interest on the 2010A Senior Notes for Federal or state income tax purposes, and thus on the value or marketability of the 2010A Senior Notes. This could result from changes to Federal or state income tax rates, changes in the structure of Federal or state income taxes (including replacement with another type of tax), repeal of the exclusion of the interest on the 2010A Senior Notes from gross income for Federal or state income tax purposes, or otherwise. It is not possible to predict whether any legislative or administrative actions or court decisions having an adverse impact on the Federal or state income tax treatment of holders of the 2010A Senior Notes may occur. Prospective purchasers of the 2010A Senior Notes should consult their own tax advisers regarding such matters.

Bond Counsel has not undertaken to advise in the future whether any events after the date of issuance and delivery of the 2010A Senior Notes may affect the tax status of interest on the 2010A Senior Notes. Bond Counsel expresses no opinion as to any Federal, state or local tax law consequences with respect to the Senior Notes, or the interest thereon, if any action is taken with respect to the 2010A Senior Notes or the proceeds thereof upon the advice or approval of other counsel.

### **RATINGS**

The 2010A Senior Notes have been assigned ratings by Standard & Poor’s Ratings Group, Inc. (“S&P”), Moody’s Investors Service, Inc. (“Moody’s”) and Fitch Ratings, Inc. (“Fitch”). The ratings assigned by S&P are “AAA,” the ratings assigned by Moody’s are “Aa1,” and the ratings assigned by Fitch are “AA+,” respectively, for the 2010A Senior Notes.

A security rating should be evaluated independently of similar ratings of different types of securities. A rating is not a recommendation to buy, sell or hold securities. Such ratings reflect only the respective views of such organizations, and an explanation of the significance of such ratings may be obtained from the rating agency furnishing the same. There is no assurance that a rating will continue for any given period of time or that a rating will not be revised or withdrawn entirely by any or all of such rating agencies, if, in its or their judgment, circumstances so warrant. Any downward revision or withdrawal of a rating could have an adverse effect on the market prices of the 2010A Senior Notes.

## CERTAIN LEGAL MATTERS

The unqualified approving opinion as to the legality of the 2010A Senior Notes will be rendered by Nixon Peabody LLP, Boston, Massachusetts, Bond Counsel to the State Treasurer. The proposed form of such opinion of Bond Counsel is attached to this Official Statement as Appendix D. Certain legal matters will be passed upon for the Underwriters by their counsel, Edwards Angell Palmer & Dodge LLP, Boston, Massachusetts.

## UNDERWRITING

The 2010A Senior Notes are being purchased by the Underwriters, for whom Jefferies & Company, Inc. is acting as Representative (the "Representative"). The Underwriters have agreed, subject to certain conditions, to purchase all of the Senior Notes from the Commonwealth at a discount from the initial public offering prices or yields set forth on the inside cover page hereof equal to approximately 0.345555% of the aggregate principal amount of the 2010A Senior Notes. The Underwriters have agreed to reoffer such 2010A Senior Notes at public offering prices not higher than or at yields not lower than those set forth on the inside cover page of this Official Statement. The Underwriters are obligated to purchase all such 2010A Senior Notes, if any are purchased, the obligation to make such purchase being subject to certain terms and conditions set forth in the Purchase Contract, the approval of certain legal matters by counsel and certain other conditions. Such 2010A Senior Notes may be offered and sold by the Underwriters to certain dealers (including dealers depositing such 2010A Senior Notes in unit investment trusts or mutual funds, some of which may be managed by the Underwriters) and certain dealer banks and banks acting as agents at prices lower (or yields higher) than the public offering prices (or yields) set forth on the inside cover page of this Official Statement. Subsequent to such initial public offering, the Underwriters may change the public offering prices (or yields) as they may deem necessary in connection with the offering of such 2010A Senior Notes.

*The following language has been provided by Citigroup Global Markets Inc. The Commonwealth takes no responsibility for the accuracy or completeness thereof.*

Citigroup Inc. and Morgan Stanley, the respective parent companies of Citigroup Global Markets Inc. and Morgan Stanley & Co. Incorporated, each an underwriter of the 2010A Senior Notes, have entered into a retail brokerage joint venture. As part of the joint venture each of Citigroup Global Markets Inc. and Morgan Stanley & Co. Incorporated will distribute municipal securities to retail investors through the financial advisor network of a new broker-dealer, Morgan Stanley Smith Barney LLC. This distribution arrangement became effective on June 1, 2009. As part of this arrangement, each of Citigroup Global Markets Inc. and Morgan Stanley & Co. Incorporated will compensate Morgan Stanley Smith Barney LLC. for its selling efforts in connection with their respective allocations of 2010A Senior Notes.

*The following language has been provided by J.P. Morgan Securities LLC ("JPMS"). The Commonwealth takes no responsibility for the accuracy or completeness thereof.*

JPMS, one of the Underwriters of the 2010A Senior Notes, has entered into negotiated dealer agreements (each, a "Dealer Agreement") with each of UBS Financial Services Inc. ("UBSFS") and Charles Schwab & Co., Inc. ("CS&Co.") for the retail distribution of certain securities offerings at the original issue prices. Pursuant to each Dealer Agreement, each of UBSFS and CS&Co. will purchase offered 2010A Senior Notes from JPMS at the original issue price less a negotiated portion of the selling concession applicable to any offered 2010A Senior Notes that such firm sells.

## VERIFICATION OF MATHEMATICAL COMPUTATIONS

Causey Demgen & Moore Inc., independent Certified Public Accountants, will verify the mathematical accuracy of the computations of (a) the adequacy of the forecasted receipts of principal and interest on the Defeasance Obligations to redeem the Refunded Notes on the Redemption Date, and (b) the yields on the 2010A Senior Notes and the Defeasance Obligations purchased with a portion of the proceeds of the sale of the 2010A Senior Notes based on schedules provided by the Representative. Such verification will be used in part by Nixon Peabody LLP, Bond Counsel, in concluding that the Senior Notes are not arbitrage bonds within the meaning of the Code. Causey Demgen & Moore Inc. has restricted its procedures to verify the mathematical accuracy of certain computations and has not made any study or evaluation of the

assumptions and information upon which the computations are based and, accordingly, has not expressed an opinion on the data used, the reasonableness of the assumptions, or the achievability of the forecasted outcome.

### **CONTINUING DISCLOSURE**

In order to assist the Underwriters in complying with paragraph (b)(5) of Rule 15c2-12 of the Securities and Exchange Commission, the Commonwealth will undertake in the 2010A Senior Notes to publish annual reports and notices of certain events. This undertaking is set forth in Appendix E hereto.

The Commonwealth has not failed in the last five years to comply with its continuing disclosure undertakings pursuant to existing continuing disclosure agreements with respect to the Prior Notes, the Special Obligation Bonds or the Commonwealth's general obligation debt.

### **MISCELLANEOUS**

Any provisions of the Trust Agreement, the constitution of the Commonwealth, general and special laws and other documents set forth or referred to in this Official Statement are only summarized, and such summaries do not purport to be complete statements of any of such provisions. Only the actual text of such provisions can be relied upon for completeness and accuracy.

This Official Statement contains certain forward-looking statements that are subject to a variety of risks and uncertainties that could cause actual results to differ from the projected results, including without limitation general economic and business conditions, conditions in the financial markets, the financial condition of the Commonwealth and various state agencies and authorities, receipt of federal grants, litigation, arbitration, force majeure events and various other factors that are beyond the control of the Commonwealth and its various agencies and authorities. Because of the inability to predict all factors that may affect future decisions, actions, events or financial circumstances, including, in particular, the current adverse global financial market and economic conditions, what actually happens may be different from what is set forth in such forward-looking statements. Forward-looking statements are indicated by use of such words as "may," "will," "should," "intends," "expects," "believes," "anticipates," "estimates" and others.

All estimates and assumptions in this Official Statement have been made on the best information available and are believed to be reliable, but no representations whatsoever are made that such estimates and assumptions are correct. So far as any statements in this Official Statement involve any matters of opinion, whether or not expressly so stated, they are intended merely as such and not as representations of fact. The various tables may not add due to rounding of figures.

The information, estimates and assumptions and expressions of opinion in this Official Statement are subject to change without notice. Neither the delivery of this Official Statement nor any sale made pursuant to this Official Statement shall, under any circumstances, create any implication that there has been no change in the affairs of the Commonwealth or its agencies, authorities or political subdivisions since the date of this Official Statement, except as expressly stated.

Neither the Commonwealth's independent auditors, nor any other independent accountants, have compiled, examined, or performed any procedures with respect to any prospective financial information contained herein, nor have they expressed any opinion or any other form of assurance on such information or its achievability, and assume no responsibility for, and disclaim any association with, any prospective financial information.

**AVAILABILITY OF OTHER INFORMATION**

Questions regarding this Official Statement should be directed to Colin A. MacNaught, Assistant Treasurer, Office of the Treasurer and Receiver-General, One Ashburton Place, Twelfth Floor, Boston, Massachusetts 02108, telephone (617) 367-3900, or Karol D. Ostberg, Director of Capital Finance, Executive Office for Administration and Finance, State House, Room 373, Boston, Massachusetts 02133, telephone (617) 727-2040. Questions regarding legal matters relating to this Official Statement should be directed to Kenneth C. Lind, Nixon Peabody LLP, 437 Madison Avenue, New York, New York 10022, telephone (212) 940-3005.

**THE COMMONWEALTH OF MASSACHUSETTS**

By: /s/ Timothy P. Cahill  
Timothy P. Cahill  
*Treasurer and Receiver-General*

By: /s/ Jay Gonzalez  
Jay Gonzalez  
*Secretary of Administration and Finance*

December 14, 2010

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## THE FEDERAL-AID HIGHWAY PROGRAM

The proceeds of the Senior Notes were used by the Commonwealth to finance and refinance a portion of the costs of the CA/T Project. A principal source of repayment and security for the Senior Notes has been payments received by the Commonwealth from the federal government under the Federal-Aid Highway Program, pursuant to which the federal government reimburses states for the federal share of approved highway projects. This Appendix A provides a summary of the Federal-Aid Highway Program, including the process by which states request and receive Federal Highway Reimbursements from the federal government. Terms used in this Appendix A and not defined herein are defined in Appendix B.

The Federal-Aid Highway Program is an “umbrella” term that encompasses most of the federal programs that provide highway funding to the states, including the Commonwealth. The major funding for the Federal-Aid Highway Program is made available in six core programs: the Interstate Maintenance Program, the Highway Bridge Replacement and Rehabilitation Program, the National Highway System Program, the Surface Transportation Program, the Congestion Mitigation and Air Quality Program and the Highway Safety Improvement Program.

Within the U.S. Department of Transportation, the Federal Highway Administration (“FHWA”) is the federal agency responsible for administering the Federal-Aid Highway Program. The Federal-Aid Highway Program 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. Other taxes include excise taxes on tires, trucks and trailers, and truck use taxes.

Certain Federal-Aid Highway Program features or requirements are explained or further defined where they appear below but are introduced here for reference:

- *The Federal Highway Trust Fund:* The HTF is a dedicated federal fund with dedicated revenues held in trust for reimbursement of expenditures by the states for costs of eligible transportation projects, including highway projects.
- *Authorization:* “Authorization” is the process by which Congress authorizes the expenditure of federal revenues on federal programs. For the Federal-Aid Highway Program, authorization historically has been provided on a multi-year basis. This, together with the availability of HTF revenues and future HTF collections permits states more certainty in planning long-term highway projects. 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 beyond its original expiration date of September 30, 2009 until December 31, 2010.
- *Apportionment:* For each federal fiscal year (“FFY”), the FHWA apportions the authorized funding among the states according to formulas that are established in authorizing statutes. The distribution of federal funds that do not have a statutory formula is called “allocation” rather than “apportionment.”
- *Obligation Authority (“OA”):* “Obligation” is the commitment of the federal government to pay, through reimbursements to a state, its share of the eligible expenditures on an approved project. The amount of such federal revenues that a state can obligate in a given FFY is called its “Obligation Authority.”
- *Advance Construction (“A/C”):* The A/C procedure allows states to commence eligible projects without first having to obligate the federal government’s share of expenditures. Thus, states may begin a project before amassing all of the OA needed to cover the federal government’s share.
- *Partial Conversion of A/C:* Under partial conversion of A/C, in a given year a state may convert A/C to OA and thus be eligible for reimbursement for a portion of the federal share of an A/C

project in that or in a subsequent FFY. This removes any requirement for the state to wait for reimbursements until the full amount of OA needed for the entire project is available.

These features of the Federal-Aid Highway Program work in a complementary fashion to provide a regular flow of federal reimbursements over the years to state highway projects. The participation of the Commonwealth in such reimbursements, and the role of such participation in providing payment and security for the Notes, is discussed in *Commonwealth Participation in the Federal-Aid Highway Program*.

It should be noted that the terms and conditions of participation in the Federal-Aid Highway Program as described herein are subject to change at the discretion of Congress, and there can be no assurance that the laws and regulations now governing the Federal-Aid Highway Program will not be changed in the future in a manner that may adversely affect the ability of the Commonwealth to receive adequate Federal Highway Reimbursements to pay the Senior Notes. As described in this Official Statement, if there is a deficiency in Federal Highway Reimbursements, Alternative Revenues may be available for debt service upon the occurrence of a True-Up Condition. See *Pledge of Alternative Revenues*.

### Federal Highway Trust Fund

The HTF is the primary source of funding for most of the programs in the Federal-Aid Highway Program. The HTF is divided into two accounts, the Highway Account, which funds highway and intermodal programs, and the Mass Transit Account. Federal motor fuel taxes are the major source of income into the HTF. Other taxes include excise taxes on tires, trucks and trailers, and truck use taxes. The Highway Account receives approximately 84% of gasoline tax revenues and 88% of diesel fuel revenues, with the remaining share of each revenue source being deposited in the Mass Transit Account.

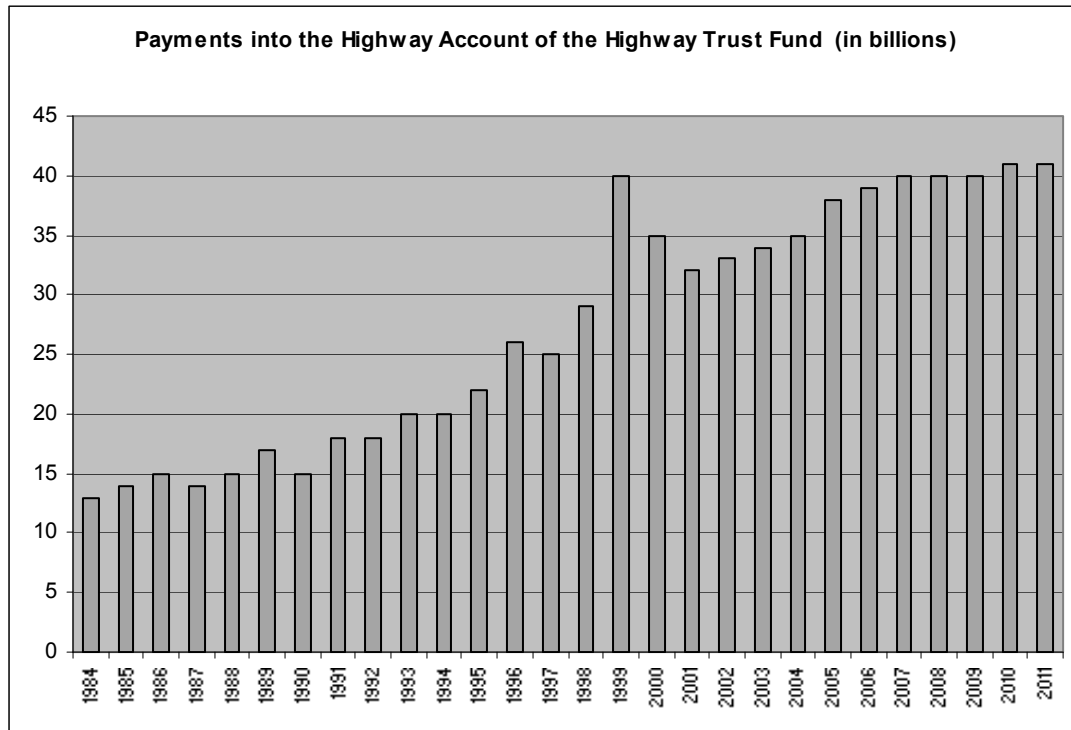
The table below shows the types of taxes deposited into the HTF and the current rates that are in effect.

Motor Fuels Taxes				
Type of Tax	Tax Rate (Cents)	Distribution of Tax		
		Highway Account of the HTF	Mass Transit Account of the HTF	Leaking Underground Storage Tank Trust Fund
Gasoline	18.4 per Gallon	83.90%	15.50%	0.50%
Diesel	24.4 per Gallon	87.90%	11.70%	0.40%
Gasohol	18.4 per Gallon	83.90%	15.50%	0.50%
Liquefied Petroleum Gas	18.3 per Gallon	88.40%	11.60%	0.00%
Liquefied Natural Gas	24.3 per Gallon	92.30%	7.70%	0.00%
M85 (From Natural Gas)	9.25 per Gallon	83.50%	15.50%	1.10%
Compressed Natural Gas	144.47 per Thousand Cubic Ft.	93.30%	6.70%	0.00%
Other User Fees				
Tires	9.45 cents for each 10 lbs. of the maximum rated load capacity over 3,500 lbs.			
Truck and Trailer Sales	12% of retailer's sales price for tractors and trucks over 33,000 lbs. gross vehicle weight ("GVW") and trailers over 26,000 lbs. GVW			
Heavy Use Vehicles	Annual tax for trucks 55,000 lbs. GVW and over equal to \$100 plus \$22 for each 1,000 lbs. (or fraction thereof) in excess of 55,000 lbs. Maximum tax of \$550.			

Source: United State Government Accountability Office.

Federal gasoline excise taxes are the largest revenue source for the HTF. The majority of these tax revenues, including fifteen and forty-four hundredths cents (15.44¢) per gallon out of the current eighteen and four-tenths cents (18.4¢) per gallon tax, go to the Highway Account.

The following table shows annual HTF collections in the Highway Account for the Federal Fiscal Years 1984 through 2011.



Sources: FFY 1984 through FFY 2008 are from Highway Statistics 2008 Office of Highway Policy Information, FHWA, Table FE-210. FFY 2009 actual, FFY 2010 and 2011 estimated are from President's FFY 2010 Budget.

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, most recently by SAFETEA-LU (as described below). SAFETEA-LU extended the imposition of taxes and the transfer of the taxes to the HTF through September 30, 2011 and authorized expenditures from the HTF through September 30, 2009. 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.

As part of its annual budget forecast issued on January 24, 2007, the nonpartisan Congressional Budget Office ("CBO") reported that if Congress adhered to the highway and safety spending levels authorized in SAFETEA-LU, absent other measures, the Highway Account of the HTF would go into deficit early in FFY 2009, before SAFETEA-LU expired. The CBO baseline projected that if the SAFETEA-LU spending levels were maintained for FFY 2007-2009 there would be a deficit in the Highway Account at the end of FFY 2009 in the amount of \$3.616 billion. The President's budget proposal in February 2008 projected that the HTF would show a deficit of at least \$3.3 billion in FFY 2009.

In response to the projected shortfalls, Congress enacted two separate laws to maintain a positive balance in the HTF through the end of FFY 2009, demonstrating its commitment to funding highway needs nationwide. First, enacted on September 15, 2008, transferred \$8.017 billion from the General Fund to the HTF to cover the shortfall for FFY 2009. These funds restored revenues that had been shifted from the HTF to

the General Fund as a result of federal budget in 1998. The second, enacted on August 7, 2009, transferred an additional \$7 billion from the General Fund to the HTF to cover an additional shortfall through FFY 2009. The two actions allowed state departments of transportation to continue to meet their financial obligations and sustain hundreds of millions of dollars of construction projects.

The primary source of funds in the HTF is federal excise taxes on motor fuels, which are in part driven by total vehicle miles traveled (“VMT”) in the U.S. As shown in the table below, national VMT have increased from 1.75 trillion miles in 1985 to 2.99 trillion miles in 2010, growing at a compounded annual growth rate of 2.2%. During this time period, total VMT have increased each year except for 2008 and 2009, which saw decreases in VMT of 1.3% and 0.7%, respectively. However, total VMT increased by 0.4% in 2010 to 2.99 trillion miles. It cannot be determined whether the improvement in VMTs over the past several months will continue.

**Vehicle Miles Traveled ("VMT")**  
*(in Millions of Miles)*

<b>Year</b>	<b>Total<sup>1</sup></b>	<b>Annual Change</b>	<b>Year</b>	<b>Total<sup>1</sup></b>	<b>Annual Change</b>
1985	1,754,347		1998	2,594,407	2.1%
1986	1,813,371	3.4%	1999	2,653,665	2.3%
1987	1,894,389	4.5%	2000	2,742,583	3.4%
1988	1,993,556	5.2%	2001	2,773,718	1.1%
1989	2,084,172	4.5%	2002	2,838,687	2.3%
1990	2,143,440	2.8%	2003	2,870,128	1.1%
1991	2,158,934	0.7%	2004	2,943,950	2.6%
1992	2,217,543	2.7%	2005	2,989,522	1.5%
1993	2,280,121	2.8%	2006	2,999,680	0.3%
1994	2,331,760	2.3%	2007	3,033,471	1.1%
1995	2,411,226	3.4%	2008	2,993,536	-1.3%
1996	2,455,922	1.9%	2009	2,973,911	-0.7%
1997	2,540,227	3.4%	2010	2,986,898	0.4%

Source: FHWA (<http://www.fhwa.dot.gov/ohim/tvtw/10augvt/page2.cfm>)

<sup>1</sup> Represents the moving 12-month total, as of August 30 of each year.

Various proposals are being considered to address the HTF’s future funding, including an increase in fuel taxes, a variety of new taxes (including a tax on VMT) and other funding sources for the HTF. On March 18, 2010 President Obama signed into law the Hiring Incentives to Restore Employment (“HIRE”) Act, which increased funds available to states for infrastructure improvements. There can be no assurance that any other similar proposals will be enacted by Congress.

**History**

The modern Federal-Aid Highway Program originated in the Federal-Aid Highway Act of 1956. The Federal-Aid Highway Program initially was established as a pay-as-you-go system, meaning that costs of constructing and maintaining the system were to be borne primarily by its users, who would pay a federally-imposed tax on motor fuels. Federal user fees were to provide 90% of the cost of construction, with the remainder paid for by the states.

The Federal-Aid Highway Act of 1956 was the first of a long series of authorizing statutes for the Federal-Aid Highway Program. Extensions of the act were passed in 1958, 1959, 1960, 1961, 1962, 1964, 1966, 1968, 1970, 1973, 1974 and 1976; in each case the statute was known simply as the Federal-Aid Highway Act. The 1965 Highway Beautification Act made minor additions and changes to the program, as did the Highway Safety Act of 1973. The 1978 Surface Transportation Act and the Federal-Aid Highway Act of 1981 were also primarily

extensions of existing authority. SAFETEA-LU, its immediate predecessor, the Transportation Equity Act for the 21<sup>st</sup> Century (“TEA 21”), and its immediate predecessor, the Intermodal Surface Transportation Efficiency Act of 1991 (“ISTEA”) are the most recent multi-year authorizing statutes.

The 1982 Surface Transportation Assistance Act (“STAA”) made notable changes to the Federal-Aid Highway Program, and began the modern multi-year (i.e. four or more years) authorizing process. STAA also guaranteed each state a minimum 85% return on the money paid in by highway users of the state. Such “equity provisions” have continued in all subsequent authorizing legislation to date, and operate to compensate so-called “donor states,” whose historic highway funding levels have been below their collections for the HTF.

In 1991, ISTEA broadened the focus of the Federal-Aid Highway Program, changed its structure significantly and created several new funding categories. ISTEA also gave state and local governments greater flexibility in determining their transportation infrastructure priorities, whether transit or highways, and for the first time allowed significant flexibility to redirect federal revenues among programs. ISTEA also authorized innovative approaches to federal-aid highway funding, including the use of private sector funding sources for transportation improvements. Innovative financing procedures were authorized and encouraged, and states were authorized to augment federal revenues with alternate sources of revenues.

The National Highway System Designation Act of 1995 (the “NHS Act”) designated the National Highway System to include the Interstate System as well as other roads important to the nation’s economy, defense, and mobility. The NHS Act made several changes affecting the financing of federal-aid highway projects, including A/C procedures. Under the NHS Act, to avoid delays in projects that are eligible for federal funding, the FHWA may approve A/C for a project if the state can provide 100% of the costs up-front. Prior to the NHS Act, only when a state had amassed sufficient OA to cover the federal share of a project’s total costs could it convert the project from A/C to OA and be reimbursed for the federal share. The NHS Act removed the requirement that states must amass OA equal to the full federal share before reimbursement could occur. Partial conversion now allows a state to be reimbursed for a portion of the federal share of the project’s total costs as OA becomes available each year and costs are expended.

*TEA 21.* TEA 21, which became law on June 9, 1998 and was amended on July 22, 1998, extended the authorization of the Federal-Aid Highway Program through FFY 2003. TEA 21 expired September 30, 2003, and was the subject of twelve interim reauthorization extensions until the enactment of SAFETEA-LU in August 2005. According to the FHWA, under TEA 21, average annual authorizations for highway aid to the states for FFY 1998 through FFY 2003 were approximately \$28.5 billion.

TEA 21 increased equity protections by assuring each state at least 90.5% of its proportional share of apportioned programs, based on its percentage contribution to HTF receipts, which were reauthorized through FFY 2005. TEA 21 also included a provision known as Revenue Aligned Budget Authority (“RABA”) which required that HTF revenues be spent on transportation-related improvements, rather than allowed to accumulate into large surpluses. To this end, TEA 21 set yearly minimum guaranteed funding levels for the authorization period, based on annual HTF revenues.

*SAFETEA-LU.* On August 10, 2005, SAFETEA-LU was signed into law, and authorized a total of \$286.4 billion for federal surface transportation programs in FFY 2005 through FFY 2009. This represented a 38% increase in authorization over TEA 21. According to the FHWA, under SAFETEA-LU, average annual apportionments for highway aid to the states for FFY 2005 through FFY 2009, after redistribution of minimum guarantee funds, and in accordance with RABA, which adjusts annual highway funding levels to reflect anticipated changes in HTF receipts, are approximately \$37.9 billion, as indicated in the table below (which shows figures by FFY and in billions of dollars):

2005	2006	2007	2008	2009	Average
\$34.4	\$36.0	\$38.2	\$39.6	\$41.2	\$37.9

Source: FHWA.

SAFETEA-LU retained the budgetary firewall and minimum guarantee provisions of TEA 21, increasing each state's minimum rate of return of HTF contributions from 90.5% in TEA 21 to 92% by 2008. All states were also guaranteed a total six-year average highway funding increase of at least 19%, when compared to the state's six-year TEA 21 funding total.

### **Reauthorization Risk**

On September 30, 2009 SAFETEA-LU expired without enactment of a new six-year reauthorization program. In order to avoid a halt in the Federal-Aid Highway Program, Congress has enacted six short-term interim authorizations: the first extended SAFETEA-LU's FFY 2009 funding levels through the end of October 2009, the second, enacted in late October 2009, extended FFY 2009 funding levels through December 18, 2009, the third extended FFY 2009 funding levels through December 23, 2009, the fourth extended FFY 2009 funding levels through February 28, 2010, the fifth extended FFY 2009 funding levels through March 28, 2010 and the sixth extended FFY 2009 funding levels through December 31, 2010, as extended by the HIRE Act. If SAFETEA-LU is not reauthorized at sufficient funding and spending levels to address the shortfalls, the HTF could continue to experience deficits. There are a number of reauthorization proposals in the United States Congress, none of which have yet been enacted. It is unknown whether reauthorizing legislation will be enacted by December 31, 2010.

### **Rescissions**

Through legislation, unused balances of previously authorized funds can be rescinded (canceled). In 1986 and 1990, a specified percentage of contract authority was sequestered (in effect, rescinded) when the overall federal spending exceeded certain budget targets, triggering automatic sequestration provisions. In 1996, the authorizations for the Federal-Aid Highway Program were reduced due to a budget compliance provision included in Section 1003(c) of ISTEA which placed a cap on the amount of funding that could be authorized out of the HTF in total between 1992 and 1996. This provision was triggered by the open-ended equity adjustment authorizations contained in ISTEA, which provided more funding to the States than was originally estimated at the time the act was passed. In more recent years, across-the-board cuts have been enacted during the appropriations process, typically in the last passed appropriations act for the fiscal year. These cuts are used to bring the total amount appropriated in all the appropriations acts for the fiscal year into line with the amount agreed to in the budget resolution or some other spending target. While the specifics of the cuts have varied, typically the cuts have applied government wide to all programs on the discretionary side of the budget, cutting appropriated budget authority, obligation limitations, and contract authority subject to obligation limitations. However, to date, most rescissions of transportation funding have been limited to unused contract authority and have not reduced obligation authority. Once funds are eliminated (by any mechanism) they cannot be obligated.

Since the passage of SAFETEA-LU, Congress has taken eight separate actions to reduce SAFETEA-LU's authorized spending levels by issuing rescissions: three actions for FFY 2006, two for FFY 2007, one for FFY 2008 and two for FFY 2009.

### **Operations**

The current Federal-Aid Highway Program continues to reimburse a large percentage of state expenditures for approved highway projects. The financial assurance provided by the Federal-Aid Highway Program is unusual among federal programs in that:

- The Federal-Aid Highway Program is based on dedicated revenues, from a user-tax source, deposited in a dedicated trust fund (the HTF);
- The budget and contract authority of the FHWA is established by a multi-year authorization act rather than annually through appropriation acts; and
- Except in cases of rescission as explained above, contract authority is not at risk during the annual appropriations process (as budget authority is in most other federal programs).

The process for reimbursing state expenditures may be summarized in three steps: authorization, obligation and program implementation. The authorization step is the most critical step in establishing overall spending authority for federal highway funding. Authorizing legislation extends the life of the Federal-Aid Highway Program and the collections that fund the HTF, sets Federal-Aid Highway Program objectives and provides formulas for determining the distribution or apportionment of available resources among the states. The second step, obligation, is the process through which states make use of, or “obligate,” the contract authority that has been apportioned or allocated to them in the authorization process. The third step, program implementation, leads to actual receipt of federal funds by states.

#### *Step 1: Authorization*

The first step is the multi-year (or under interim authorizations, multi-month) authorizing legislation. Such highway authorization acts:

- Establish the taxes that fund the HTF and extend their life (reauthorization);
- Establish the specific programs and procedures through which states receive federal financial assistance for their highway programs; and
- Set upper limits on funding for specific programs and for the overall Federal-Aid Highway Program.

*Multi-Year Authorization Acts.* As noted earlier, the Federal-Aid Highway Program since 1982 has been periodically reauthorized on a multi-year basis by authorization acts, through which Congress influences the level of federal involvement in state highway program activities. Annual appropriations acts then establish any limits on the amount of federal funds that the FHWA may obligate to states in a given year.

*Budget and Contract Authority.* All federal programs require budget and contract authority before revenues may be committed and spent. Normally this authority is provided through a two-step process, with authorizing legislation describing the purposes for a specific program and setting a proposed level of spending, and appropriations acts providing the budget authority or legal ability to spend federal revenues. Appropriations are often for a lower amount than that set by authorizations. The Federal-Aid Highway Program combines these two steps, with authorizing legislation providing the United States Secretary of Transportation with contract authority or the legal ability to enter into binding contracts with state transportation departments (“DOTs”) and other bodies specified in the Federal-Aid Highway Program, subject to annual obligation limitations.

Contract authority provides state DOTs with assurance about the level of future federal revenues that will be available. This, in turn, makes it easier and more cost-effective to plan and execute multi-year construction projects. As a result of contract authority and the collection of user taxes into the dedicated HTF, the formal appropriation by Congress of revenues on an annual basis generally has been non-controversial. Constraints arising from the annual appropriation process are described in Step 2.

*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 Federal-Aid Highway Program, 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 authorized the Federal-Aid Highway Act 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 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:

- Access to Unobligated Balances: The 1987 Surface Transportation and Uniform Relocation Assistance Act (“STURAA”) 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.
- Short-Term Authorization: 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 can use at funding levels equal to about a quarter of FFY 1997 authorization levels. 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 interrupt the flow of revenues, because dedicated highway user fees continued to flow into the HTF. (See Step 2: Obligation, below, for further explanation of OA and unobligated balances.) Similarly, TEA 21 expired on September 30, 2003, and Congress enacted twelve interim authorization measures until the enactment of SAFETEA-LU in 2005. As discussed herein, SAFETEA-LU has been extended six times since its expiration on September 30, 2009. Each of these extensions has provided additional apportionment consistent with SAFETEA-LU levels, eliminating the need to manage OA based upon unobligated balances.

Although these measures have been enacted by Congress or used by 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.

*Annual Distributions.* For most components of the Federal-Aid Highway Program, the authorization acts set the distribution of spending authority among states. The primary methods used to distribute authorized federal highway revenues are “apportionment” and “allocation”:

- Apportionments. The contract authority created by authorization acts such as SAFETEA-LU is distributed annually among the 50 states, the District of Columbia, and Puerto Rico using a process called apportionment of revenues. Apportionments indicate the maximum amount of contract authority that each state can expend for eligible projects in specific programs. For each FFY, the FHWA has responsibility for apportioning authorized funding for the various programs among the states according to formulas established in the authorizing statute. Annual apportionments are generally made on the first day of the FFY, which is October 1.
- Allocations. While most highway revenues are distributed to states through apportionments, some funding categories do not contain legislatively-mandated apportionment formulas. Distribution of revenues where there are no statutory formulas is called “allocation” or “discretionary allocation”. In most cases, allocated federal funding is divided among states using criteria determined administratively by the federal Department of Transportation or as provided in a statute, often through competitive grant procedures.

Apportionment formulas have been designed historically to ensure distribution of federal revenues among states according to program needs, but are also increasingly intended to provide states a share of total HTF expenditures relatively close to their payments into the HTF.

*Availability of Federal Highway Revenues.* Federal-aid highway apportionments and allocations are available to states for use for more than one year. Their availability does not terminate at the end of the FFY, as is the case with many other federal programs. Consequently, when new apportionments or allocations are made, the amounts are added to a state’s unused apportionments and allocations from the previous FFY. Should a state fail to



*obligate* (commit to spend) apportionments and allocations within the period of availability specified for a given program (typically four years for most highway programs), however, the amount of unused apportionment lapses—that is, it is no longer available except for a few programs which receive indefinite, or “no-year” OA.

*Matching Requirements.* With a few exceptions, the federal government does not pay for the entire cost of construction or improvement of federal-aid highways. Federal reimbursements are typically matched with state and local government revenues to account for the necessary dollars to complete the project. The maximum federal share is specified in the legislation authorizing the program. Most projects have an 80% federal share while Interstate Construction, Maintenance and Highway Safety projects typically have been funded with a 90% federal share.

### *Step 2: Obligation*

The second step of the federal-aid funding process occurs when revenues that have been authorized by legislation, and either apportioned or allocated to individual states, are obligated for a specific purpose. As noted in the previous section, Congress uses annual appropriations acts to control actual annual obligation of funds in the HTF. Appropriations acts limit the amount of federal money that actually will be obligated and thus ultimately spent, and these annual amounts typically are less than the authorized amount. This ceiling on the amount of contract authority that states may use is called the “annual obligation limit.”

*Obligation* is the commitment of the federal government to pay, through reimbursement to a state, the federal government’s share of an approved project’s eligible costs, which may, under certain circumstances, 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. From the federal perspective, obligations made are the outlays the federal government has committed to make from the HTF in the future. Because of the close relationship between obligations and outlays, Congress and the FHWA play a strong role in determining how much federal funding can be obligated by individual states through two primary processes:

- Appropriations acts; and
- Distribution of OA.

*Appropriations Acts.* Congressional appropriations committees use the amount of federal-aid highway revenues that states can obligate in a given year, called “Obligation Authority”, as a means of balancing the annual level of highway spending with other federal budgetary priorities. This is accomplished through the establishment of an annual obligation limitation in the annual Department of Transportation and Related Agency Appropriations Act. The annual obligation limitation is usually less than the level of funding authorized for the same year.

*Distribution of OA.* The obligation limitation is the amount of authorized funding that Congress allows states collectively to obligate in an individual year. Under TEA 21, the annual obligation limitation included two elements — a large portion protected by firewalls and tied to projected HTF receipts through RABA (roughly 90% of total annual contract authority), and a smaller portion that competes with other discretionary budget priorities for funding (less than 10% of total annual contract authority). Beginning in FFY 2000, the level of OA protected by firewalls was established each year as the guaranteed obligation limitation in TEA 21, adjusted by the difference between HTF revenue estimates made for TEA 21 and Department of Treasury projections. The provisions related to OA in TEA 21 continued under SAFETEA-LU. Additional, discretionary OA is determined when annual appropriations bills are developed and is counted under Congress’ annual spending cap, which is the amount of federal dollars that can be spent on all domestic, non-entitlement programs in a given year. The combined total may still be below the authorized annual level, and serves as a limit on the total obligations in that particular year.

Once Congress establishes an overall obligation limitation, the FHWA distributes OA to states proportionately to each state’s share of apportioned and allocated revenues to include minimum guarantee allocations that bring donor states up to the minimum 92% funding level (by FFY 2008). The actual ratio of OA to apportionments and allocations may vary from state to state because some federal-aid programs are exempt from the obligation limitation. Once each state’s OA is set, states then submit requests to the FHWA to obligate revenues

representing the federal share of specific projects throughout the years. (A further description of this process is included in Step 3.) As a state obligates revenues, its balance of OA is commensurately reduced, although additional OA may be received (e.g., via redistribution from other states).

A state's OA (unlike its apportionments and allocations of authorized funding) must be committed before the end of the FFY for which it is made available; if not, it will be distributed to other states. The FHWA closely monitors each state's plans for use of OA. In mid-summer, the FHWA collects any OA from states that do not plan to obligate all of their available OA before the end of the FFY, and redistributes it to other states that can obligate the revenues. This reallocation of OA is known as the August redistribution.

*Unobligated Balances.* Because congressional authorization of federal-aid highway revenues represents a commitment to make all authorized revenues available to states for highway purposes, any shortfall between the limit on OA created through the annual appropriations process and the amount of contract authority apportioned and allocated to states does not disappear. Instead, the difference between obligation limitations and authorization levels creates what are known as "unobligated balances."

Although most federal-aid apportionments lapse after four years, this rarely happens with apportioned highway revenues because old apportionments are always spent before new apportionments. That is, when a state receives new apportionments and OA at the beginning of an FFY, obligations are first made against remaining prior year apportionments plus allocation until these are depleted. The net effect of this process, in conjunction with the year-to-year establishment of obligation limitations, has been that states have amassed considerable unobligated balances.

### *Step 3: Program Implementation*

The third and final step in the overall federal-aid highway funding process, program implementation, occurs after authorized revenues have been distributed to states, and after states have had the opportunity to obligate those revenues. Once federal-aid highway revenues have been authorized and obligated, states must have developed highway programs that describe, at a project-by-project level, exactly how federal reimbursements will be earned. The process of developing and implementing state highway programs has three broad stages:

- Budgeting;
- Planning and programming; and
- Fiscal management and reimbursement.

Each stage helps to ensure that states develop programs that match funding availability, and that the FHWA is able to distribute federal reimbursements to states in a timely manner.

*Budgeting.* Budgetary information about availability of funding is crucial to the development of state highway programs. Projected state and federal funding levels are used to budget transportation needs. Consequently, state transportation budget officials track the availability of funding and develop forecasts of future state and federal revenues. States must estimate the availability of short and long-term state and federal funding in order to plan their highway programs. They use this information as a guide during long-range planning, and as a strict constraint on short-term programming.

*Planning and Programming.* The budget process—particularly the identification of available funding—provides the context for transportation planning and programming. The long-range planning process provides a perspective of anticipated project needs regionally across the state. The State Transportation Improvement Programs ("STIP") follow on from regional long-range plans and provide a detailed outline of projects that are proposed for implementation in a time-frame of two to six years. At the federal level, state and local highway plans are reviewed by U.S. Environmental Protection Agency ("EPA") and the FHWA.

As a condition for receiving federal reimbursements for transportation programs, states must develop comprehensive transportation plans that are based on anticipated long-term state and federal funding levels for Federal-Aid Highway Program categories. States and urban areas must satisfy these federal requirements in order to remain eligible for federal reimbursements, and specific projects are not eligible unless they are either directly identified in a long-range plan or consistent with policies and objectives identified in long-range plans. Current federal law requires states to develop long-range transportation plans (“LRPs”) that identify long-range state policies, objectives and goals, while using realistic projections of available future state and federal funding.

Current federal law also requires that short-term planning and programming must be conducted at least every two years through the development of a TIP for each metropolitan area. Among other requirements, each TIP must include, for each project, the estimated project cost and amount of federal revenues proposed to be obligated during each year. The TIPs are then combined into the STIP, which also includes projects from regions outside a state’s metropolitan areas. The STIP lists all projects proposed for funding with federal revenues for a period of four years. The STIP is then submitted to the FHWA and FTA for approval.

*Fiscal Management and Federal Highway Reimbursements.* Once budgeting, planning and programming are complete, projects move into a fiscal management phase. This fiscal management process is the third element of the implementation step in the overall federal highway funding process. A state-led fiscal management system—conducted in accordance with FHWA requirements—is used to determine exactly how much federal funding will be received for each project, to obtain final FHWA authorization before projects are implemented, and to ensure timely federal reimbursement of state expenditures on contractor costs.

States must follow federal fiscal management procedures as they implement projects that have passed through the approval and programming processes. These fiscal management procedures ensure that the FHWA and states are able to manage the process efficiently, from project authorization to actual payment of Federal Highway Reimbursements to the state.

In the traditional approach, a state simply obligates the full federal share of available funding 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 funding on a project. The project sponsor submits plans, specifications and estimates (“PS&Es”) 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 the PS&Es must identify the category of federal funding that will be used.

The FHWA evaluates the PS&Es to ensure that the project is eligible for federal funding and meets a variety of federal requirements (e.g., design standards). Provided that all requirements are satisfied, the FHWA authorizes federal participation in the project, and obligates the federal share of project costs. By obligating the revenues, the FHWA makes a commitment to reimburse the state for the federal share of eligible project costs. It sets aside the appropriate amount of that state’s OA, and also sets aside an equivalent amount of apportioned revenues by program (or programs). Accordingly, the state must have sufficient OA to cover the level of federal participation it is requesting.

Once authorization for a project has been obtained, the state advertises the project and receives bids. Based on actual costs identified in bids, the state awards the contract to the lowest qualified bidder and submits a request to the FHWA asking for any necessary adjustments to federal obligations for the project. If approved, the amounts agreed to are included in a project agreement which identifies the revenues that will be encumbered by the state (formally applied against the state’s resources), and the amount that will be reimbursed by the federal government.

Construction begins, and contractors submit bills to the state as work is completed. A state pays its contractor’s bills with cash from the state treasury; the state bills the FHWA electronically for the federal share of completed work for which payment has been made; and the FHWA makes payment to the state via electronic transfer. This FHWA reimbursement to the state liquidates its obligation for the federal share of the costs incurred to that point. As project work continues and state expenditures are reported to the FHWA, federal reimbursements are made, generally on a weekly basis.

Innovative variations on this fiscal management approach include A/C and partial conversion of A/C. These variations complement one another to provide a state with additional flexibility in managing its OA and cash.

The A/C approach for authorizing projects allows states to finance projects that are eligible for federal aid without obligating the federal share of costs at the outset of the project. This allows states to begin a project before amassing all of the OA needed to cover the federal share of that project. As with the traditional approach, the state submits PS&Es to the FHWA and requests project authorization. Under A/C, however, the FHWA is asked to authorize the project without obligating federal revenues. As a result, the state will cover the entire cost of the project and later may request the obligation of revenues, when sufficient OA is available and is desired by the state. Further, the state may then take credit for state expenditures, made from project approval to that date, as a basis for earning reimbursements.

Once the FHWA authorizes a project for federal assistance, the state follows the same procedure to advertise a project, to award the contract, and to reconcile the level of state and federal funding required. The state may request that the FHWA convert its A/C amount to an obligation at any time, provided the state has sufficient OA. This conversion of A/C to OA must occur in order for the state to be reimbursed for the federal share of the project. The state can convert A/C to OA long after state expenditures are made.

Under partial conversion of A/C, moreover, a state follows the steps to apply for A/C but converts, obligates, and receives reimbursement for only a portion of its funding of an A/C project in a given year. This removes any requirement to wait until the full amount of OA is available. The state can thus obligate varying amounts for the project's eligible cost in each year, depending on how much of the state's OA is available and desired by the state.

States are required to use a detailed accounting system to track project expenditures and reimbursements. In addition, a federal system tracks payments to states.

**SUMMARY OF CERTAIN PROVISIONS OF THE TRUST AGREEMENT**

The Trust Agreement contains terms and conditions relating to the issuance and sale of Senior Federal Highway Grant Anticipation Notes under it, including various covenants and security provisions, certain of which are summarized below. For purposes of this summary, all references to “Senior Notes” shall refer to the Federal Highway Grant Anticipation Notes issued under the Trust Agreement. This summary does not purport to be comprehensive or definitive and is subject to all of the provisions of the Trust Agreement, to which reference is hereby made. Copies of the Trust Agreement are available from the Trustee.

**Definitions**

The following is a summary of certain terms used in the Trust Agreement, in this Appendix A and otherwise used in this Official Statement.

“1998A Notes” shall mean the Commonwealth’s Federal Highway Grant Anticipation Notes, 1998 Series A in the original principal amount of \$600,000,000 issued pursuant to the First Supplemental Indenture.

“1998B Notes” shall mean the Commonwealth’s Federal Highway Grant Anticipation Notes, 1998 Series B in the original principal amount of \$321,720,000 issued pursuant to the Second Supplemental Indenture.

“2000A Notes” shall mean the Commonwealth’s Federal Highway Grant Anticipation Notes, 2000 Series A in the original principal amount of \$577,605,000 issued pursuant to the Third Supplemental Indenture.

“2003A Notes” shall mean the Commonwealth’s Special Obligation Senior Notes (Federal Highway Grant Anticipation Note Program), 2003 Series A in the original principal amount of \$408,015,000 issued pursuant to the Fourth Supplemental Indenture.

“Act” shall mean the provisions of Section 9 through 10D of Chapter 11 of the Acts of 1997, as amended by Chapter 121 of the Acts of 1998, and as further amended by Chapter 235 of the Acts of 1998, in effect as of the date of the Trust Agreement.

“Accreted Value” shall mean with respect to any Senior Notes that are Capital Appreciation Notes, an amount equal to the principal amount of such Capital Appreciation Notes (determined on the basis of the initial principal amount per \$5,000 at maturity thereof) plus the amount assuming compounding (as set forth in the Applicable Supplemental Trust Agreement) of earnings which would be produced on the investment of such initial amount, beginning on the dated date of such Capital Appreciation Notes and ending at the maturity date thereof, at a yield which, if produced until maturity, will produce \$5,000 at maturity. As of a Valuation Date, the Accreted Value of any Capital Appreciation Notes shall mean the amount set forth for such date in the Applicable Supplemental Trust Agreement and as of any date other than a Valuation Date, the sum of (i) the Accreted Value on the preceding Valuation Date and (ii) the product of (1) a fraction, the numerator of which is the number of days having elapsed from and including the preceding Valuation Date and the denominator of which is the number of days from and including such preceding Valuation Date to the next succeeding Valuation Date, and (2) the difference between the Accreted Values for such Valuation Dates.

“Additional Pledged Funds” shall mean any moneys or funds hereafter pledged by the Commonwealth for the purpose of further securing the payment of all Senior Trust Agreement Obligations.

“Adjusted Note Debt Service Requirement” shall mean, for any period for which such calculation shall be made in connection with the issuance of Refunding Notes, the aggregate Note Debt Service Requirement on Senior Notes Outstanding during such period, taking into account the following adjustments:

- (i) With respect to Variable Rate Notes, the aggregate Note Debt Service Requirement thereon shall be determined based upon an interest rate equal to the Assumed Rate, calculated as of

such date of determination; provided, however, if the Commonwealth (1) enters into a Qualified Hedge Agreement with a Hedge Provider requiring the Commonwealth to pay a fixed interest rate or providing for a maximum interest rate on a notional amount, and (2) has made a determination that such Qualified Hedge Agreement was entered into for the purpose of providing substitute interest payments or limiting the potential increase in the interest rate for a particular maturity of Senior Notes in a principal amount equal to the notional amount of the Qualified Hedge Agreement, then during the term of such Qualified Hedge Agreement and so long as the Hedge Provider under such Qualified Hedge Agreement is not in default under such Qualified Hedge Agreement, the interest rate on such Senior Notes shall be determined as if such Senior Notes bore interest at the fixed interest rate or maximum interest rate, as the case may be, payable by the Commonwealth under such Qualified Hedge Agreement;

- (ii) with respect to Fixed Rate Notes, if the Commonwealth (1) enters into a Qualified Hedge Agreement with a Hedge Provider requiring the Commonwealth to pay a variable interest rate on a notional amount and (2) has made a determination that such Qualified Hedge Agreement was entered into for the purpose of providing substitute interest payments for a particular maturity of Senior Notes in a principal amount equal to the notional amount of the Qualified Hedge Agreement, then during the term of such Qualified Hedge Agreement and so long as the Hedge Provider under such Qualified Hedge Agreement is not in default under such Qualified Hedge Agreement, the interest rate on such Senior Notes shall be determined as if such Senior Notes bore interest at the Assumed Hedge Rate;
- (iii) with respect to Tender Notes, the aggregate Note Debt Service Requirement thereon shall not include amounts payable upon mandatory or optional tender, but shall be deemed to include all periodic Note Related Costs and other payments to the provider of any Liquidity Facility, and shall not be based upon the terms of any Reimbursement Obligation to such provider except to the extent and for periods during which Note Related Costs and other payments are required to be made pursuant to such Reimbursement Obligation due to such provider advancing funds;
- (iv) with respect to Senior Notes that have Credit Enhancement, the aggregate Note Debt Service Requirement thereon shall be deemed to include all periodic Note Related Costs and other payments to the provider of the Credit Enhancement, but shall not be based upon the terms of any Reimbursement Obligation to such provider except to the extent and for periods during which Note Related Costs and other payments are required to be made pursuant to such Reimbursement Obligation due to such provider advancing funds; and
- (v) the amount of any investment earnings and return of principal or projected investment earnings and projected return of principal, as the case may be, allocable to amounts in the Debt Service Liquidity Account shall be deducted from the Adjusted Note Debt Service Requirement for the applicable period.

“Advance Construction Balance” shall mean, as of any date of calculation, the aggregate dollar amount of the portion of federal funds referenced in all Federal-Aid Letters of Approval/Authorization and Project Agreements under the Federal Highway Construction Program between the Commonwealth and the Federal Highway Administration and designated as “advance construction” or “AC”, provided, however, that “Advance Construction Balance” shall not include any portion thereof related to the CA/T Project and identified in the then most recent finance plan for the CA/T Project filed from time to time by the Commonwealth with the Federal Highway Administration as expected to be unavailable for conversion to Obligation Authority as a result of any applicable federal law limiting the aggregate amount of federal funding for the CA/T Project.

“Advance Refunded Municipal Bonds” shall mean any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state (i) which are not callable at the option of the obligor or otherwise prior to maturity or as to which irrevocable notice has been given by the obligor to call such bonds or obligations on the date specified in the notice, (ii) which are fully secured as to

principal and interest and redemption premium, if any, by a fund consisting only of cash or Government Obligations which fund may be applied only to the payment of interest when due, principal of and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable notice, as appropriate, and (iii) as to which the principal of and interest on the Government Obligations which have been deposited in such fund along with any cash on deposit in such fund is sufficient to pay interest when due, principal of and redemption premium, if any, on the bonds or other obligations described in this definition on the maturity date or dates thereof or on the redemption date or dates, as appropriate.

“Alternative Revenues” shall mean the receipts derived from that portion of the Gasoline Tax equal to ten cents (\$0.10) per gallon, after the payment of the Senior CTF Obligations.

“Applicable Supplemental Trust Agreement” shall mean with respect to any Series of Senior Notes, the Supplemental Trust Agreement authorizing such Series of Senior Notes.

“Appreciated Value” shall mean with respect to Senior Notes that are Deferred Income Notes until the Interest Commencement Date thereon, an amount equal to the principal amount of such Deferred Income Note (determined on the basis of the initial principal amount per \$5,000 at the Interest Commencement Date thereof) plus the amount, assuming compounding (as set forth in the Applicable Supplemental Trust Agreement) of earnings which would be produced as the investment of such initial amount, beginning on the dated date of such Deferred Income Note and ending on the Interest Commencement Date, at a yield which, if produced until the Interest Commencement Date, will produce \$5,000 at the Interest Commencement Date. As of any Valuation Date, the Appreciated Value of any Senior Notes that are Deferred Income Notes shall mean the amount set forth for such date in the Applicable Supplemental Trust Agreement and as of any date other than a Valuation Date, the sum of (i) the Appreciated Value on the preceding Valuation Date and (ii) the product of (1) a fraction, the numerator of which is the number of days having elapsed from and including the preceding Valuation Date to the Valuation Date and the denominator of which is the number of days from and including such preceding Valuation Date to and including the next succeeding Valuation Date, and (2) the difference between the Appreciated Values for such Valuation Dates.

“Appropriated Amount” shall have the meaning set forth below under “Alternative Revenues Fund”.

“Assumed Hedge Rate” shall mean the average interest rate which will be payable for the next succeeding twelve consecutive months on the notional amount under any Qualified Hedge Agreement relating to any Fixed Rate Notes as reasonably determined by an Authorized Officer.

“Assumed Rate” shall mean, with respect to any Variable Rate Notes, the SIFMA Index or 3%, whichever is higher, plus 1.50%, or such other rate as may be provided in any Applicable Supplemental Trust Agreement.

“Authorized Officer” shall mean the State Treasurer or any designee thereof and, when used in reference to an act or document, shall also mean any other person authorized by law to perform such act or sign such document.

“Bond Counsel” shall mean any lawyer or firm of lawyers nationally recognized in the field of municipal finance and selected by the State Treasurer.

“Capital Appreciation Notes” shall mean any Senior Notes as to which interest is payable only at the maturity or prior redemption thereof. For the purposes of (i) receiving payment of the redemption price, if any, of a Capital Appreciation Note that is redeemed prior to maturity, and (ii) computing the principal amount of Capital Appreciation Notes held by the Holder thereof in giving any notice, consent, request or demand pursuant to the Applicable Supplemental Trust Agreement for any purpose whatsoever, the principal amount of a Capital Appreciation Note as of a specific date shall be deemed to be its Accreted Value as of such date.

“CA/T Project” shall mean the Central Artery/Ted Williams Tunnel Project.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Commissioner of Revenue” shall mean the Commissioner of Revenue of the Commonwealth or a Deputy Commissioner or designee acting in the Commissioner’s stead.

“Commonwealth” shall mean The Commonwealth of Massachusetts.

“Commonwealth Fiscal Year” shall mean the period beginning on July 1 of any calendar year and ending on June 30 of the succeeding calendar year or such other period of twelve consecutive calendar months as may be provided by law as the fiscal year of the Commonwealth.

“Commonwealth Transportation Fund” shall mean the Commonwealth Transportation Fund of the Commonwealth established by Section 2ZZZ of Chapter 29 of the Massachusetts General Laws, as amended, or any other fund or account of the Commonwealth or any agency thereof created in replacement thereof.

“Comptroller” shall mean the Comptroller of the Commonwealth or any Deputy Comptroller or Assistant to the Comptroller or, to the extent permitted by law, any designee acting in the Comptroller’s stead.

“Costs of Issuance” shall mean all items of expense directly or indirectly payable or reimbursable by or to the Commonwealth and related to the authorization, sale and issuance of Senior Notes, including but not limited to printing costs, costs of preparation and reproduction of documents, filing and recording fees, initial fees and charges of the Fiduciaries, legal fees and charges, fees and disbursements of consultants and professionals, costs and expenses of refunding, fees, expenses and other amounts payable to any underwriters of the Senior Notes, accrued interest payable upon the initial investment of the proceeds of Senior Notes, fees and expenses payable in connection with any Credit Enhancement, Liquidity Facility or Reserve Credit Facility, fees and expenses payable in connection with any remarketing agreements or interest rate indexing agreements payable in connection with the original issuance of the Senior Notes and any other cost, charge or fee payable in connection with the original issuance of Senior Notes.

“Credit Enhancement” shall mean any agreement, including, but not limited to a policy of bond insurance, surety bond, irrevocable letter of credit, credit agreement, credit facility or guaranty arrangement with a bank, trust company, insurance company, surety company, pension fund or other financial institution that provides increased credit on or security for any Series (or portion thereof) of Senior Notes and, to the extent authorized by a Supplemental Trust Agreement, may include a Reserve Credit Facility.

“Debt Service Account” shall mean either the June 15 Debt Service Account or December 15 Debt Service Account or both, as the context requires.

“Debt Service Coverage Ratio” shall mean the ratio of the amount of Federal Highway Reimbursements expected to be available in any Federal Fiscal Year to pay Senior Trust Agreement Obligations due in the Commonwealth Fiscal Year commencing on July 1 in such Federal Fiscal Year to the amount of Senior Trust Agreement Obligations due in said Commonwealth Fiscal Year, expressed as a percentage.

“Debt Service Liquidity Account Requirement” shall mean, as of any particular date of computation, ten percent (10%) of the maximum aggregate amount of Principal Installments and interest becoming due in the current or any future Commonwealth Fiscal Year on all Senior Notes Outstanding, using the Assumed Rate for any Variable Rate Notes (or any Reimbursement Obligations issued in connection therewith which are deemed to be Senior Notes pursuant to the Trust Agreement), less, in any such Commonwealth Fiscal Year, any amounts received as payment of accrued interest from the sale of any Senior Notes which amounts are deposited in the Debt Service Fund; provided, however, that the amount held in the Debt Service Liquidity Account and funded with proceeds of Senior Notes shall not exceed one hundred twenty-five percent (125%) of the average annual aggregate amount of Principal Installments and interest becoming due in any Commonwealth Fiscal Year on all Senior Notes Outstanding, using the Assumed Rate for any Variable Rate Notes (or any Reimbursement Obligations issued in connection therewith which are deemed to be Senior Notes pursuant to the Trust Agreement).

“December 15 Debt Service Requirement” shall mean with respect to any period ending on December 15, the Note Debt Service Requirement with respect to all Senior Notes then Outstanding on such December 15.



“Defeasance Obligations” shall mean Government Obligations and Advance Refunded Municipal Bonds.

“Fannie Mae” shall mean the Federal National Mortgage Association, its successors and assigns.

“Federal Fiscal Year” shall mean the period beginning on October 1 of any calendar year and ending on September 30 of the succeeding calendar year or such other period of twelve consecutive calendar months as may be provided by law as the fiscal year of the United States.

“Federal Highway Construction Program” shall mean all federally-aided highway construction projects undertaken by the Commonwealth at any time prior to or after (so long as any Senior Notes remain Outstanding) the date of execution of the Trust Agreement as part of the Commonwealth’s program of transportation development and improvements.

“Federal Highway Grant Anticipation Note Trust Fund” shall mean the Federal Highway Grant Anticipation Note Trust Fund established by Section 10 of the Act.

“Federal Highway Reimbursements” shall mean all federal highway construction reimbursements and any other federal highway assistance received from time to time by the Commonwealth with respect to the Federal Highway Construction Program under or in accordance with Title 23 of the United States Code or any successor program established under federal law.

“FHLMC” shall mean the Federal Home Loan Mortgage Corporation, its successors and assigns.

“Fiduciary” shall mean the Trustee or any Paying Agent.

“First Supplemental Trust Agreement” shall mean the First Supplemental Trust Agreement, dated as of June 1, 1998, by and between the Commonwealth and the Trustee, relating to the 1998A Notes.

“Fourth Supplemental Trust Agreement” shall mean the Fourth Supplemental Trust Agreement, dated as of June 19, 2003, by and between the Commonwealth and the Trustee, relating to the 2003A Notes.

“Funded Debt Service Liquidity Account Requirement” shall mean, as of any particular date of computation, an amount equal to the Debt Service Liquidity Account Requirement less the stated and unpaid amounts of all Reserve Credit Facilities. The Funded Debt Service Liquidity Account Requirement shall, to the extent authorized by a Supplemental Trust Agreement, include any amount required to reimburse any provider of a Reserve Credit Facility upon any drawing of amounts thereunder.

“Gasoline Tax” shall mean the excise imposed on fuel (other than aviation fuel) by the provisions of Chapter 64A of the Massachusetts General Laws as amended from time to time.

“Government Obligations” shall mean:

- (i) non-callable direct obligations of the United States of America, non-callable and non-prepayable direct federal agency obligations the timely payment of principal of and interest on which are fully and unconditionally guaranteed by the United States of America, non-callable direct obligations of the United States of America which have been stripped by the United States Treasury itself or by any Federal Reserve Bank (not including “CATS,” “TIGRS” and “TRS” unless the Commonwealth obtains Rating Confirmation with respect thereto) and the interest components of REFCORP bonds for which the underlying bond is non-callable (or non-callable before the due date of such interest component) for which separation of principal and interest is made by request to the Federal Reserve Bank of New York in book-entry form, and shall exclude investments in mutual funds and unit investment trusts;
- (ii) obligations timely maturing and bearing interest (but only to the extent that the full faith and credit of the United States of America are pledged to the timely payment thereof); and

- (iii) certificates evidencing ownership of the right to the payment of the principal of or interest on obligations described in clause (ii), provided that such obligations are held in the custody of a bank or trust company satisfactory to the Trustee in a segregated trust account in the trust department separate from the general assets of such custodian.

“Governor” shall mean the Governor of the Commonwealth or the Lieutenant Governor of the Commonwealth at any time that under the laws of Commonwealth the Lieutenant Governor is permitted to act in the Governor’s stead.

“Hedge Provider” shall mean the counterparty with whom the Commonwealth enters into a Qualified Hedge Agreement.

“Interest Commencement Date” shall mean with respect to any Deferred Income Notes, the date specified in the Applicable Supplemental Trust Agreement (which date must be prior to the maturity date for such Deferred Income Notes), after which interest accruing on such Deferred Income Notes shall be payable with the first such payment date being the applicable interest payment date immediately succeeding such Interest Commencement Date.

“June 15 Debt Service Account” shall mean the subaccount established within the Debt Service Fund for the purpose of holding funds to be applied to meet the June 15 Debt Service Requirement.

“June 15 Debt Service Requirement” shall mean with respect to any period ending on June 15, the Note Debt Service Requirement with respect to all Senior Notes then Outstanding on such June 15.

“Liquidity Facility” shall mean any agreement with a bank, trust company, insurance company, surety company, pension fund or financial institution under which it agrees to purchase Tender Notes.

“MassDOT” shall mean the Massachusetts Department of Transportation established pursuant to Chapter 6C of the Massachusetts General Laws, and any successors or assigns thereto.

“Maximum Semi-Annual Debt Service” shall mean \$108 million.

“Note Payment Date” shall mean with respect to Senior Notes, other than Variable Rate Notes, each December 15 and June 15, and with respect to Variable Rate Notes, the first Business Day of each month commencing with the first month following the date of issuance of such Variable Rate Notes or otherwise as specified in the Applicable Supplemental Trust Agreement for such Variable Rate Notes.

“Noteholder” or “Holder,” when used with reference to Senior Notes, shall mean the Registered Owner of the Senior Notes from time to time as shown on the register for a particular Series of Senior Notes held by the Paying Agent for such Series of Senior Notes.

“Note Debt Service Requirement” shall mean, for any period of calculation or with respect to any date, the aggregate of the interest, principal amount, and Sinking Fund Payments due or to become due other than by reason of redemption or tender for purchase at the option of the Commonwealth or the registered owner of any Senior Notes on all Senior Notes Outstanding during such period or on such date; provided, however, for purposes of this definition, the scheduled principal and interest portions of the Accreted Value of Capital Appreciation Notes and the Appreciated Value of Deferred Income Notes becoming due at maturity or by virtue of Sinking Fund Payments shall be included in the calculations of accrued and unpaid and accruing interest or Principal Installments only during the period in or date on which such amounts become due for payment, unless otherwise provided in the Applicable Supplemental Trust Agreement authorizing such Capital Appreciation Notes or Deferred Income Notes.

“Note Related Costs” shall mean all costs, fees and expenses of the Commonwealth incurred or related to any Liquidity Facility, Credit Enhancement, Reserve Credit Facility, any remarketing or other secondary market transactions, any fees of Bond Counsel, attorneys, financial advisors, Fiduciaries, remarketing agents, rebate consultants, accountants and others, retained by the Commonwealth in connection with a Series, and any other fees,

charges and expenses that may be lawfully incurred by the Commonwealth to a provider of any Credit Enhancement, Liquidity Facility or Reserve Credit Facility, other than amounts paid as the Costs of Issuance for a Series, to repay or reimburse any amounts paid by such provider due to a payment under such Credit Enhancement, Liquidity Facility or Reserve Credit Facility and any interest on such repayment obligation unless any such amount constitutes a Note Debt Service Requirement for such Series.

“Notice of Redemption or Defeasance” shall have the meaning set forth below under “Revenue Account”.

“Obligation Authority” shall mean the annual limitation on the amount of eligible costs under Title 23 of the United States Code that the Commonwealth may obligate with respect to the Federal Highway Construction Program during a given Federal Fiscal Year, as specified in annual Federal appropriations acts.

“Outstanding,” when used with reference to Senior Notes, shall mean as of a particular date, all Senior Notes theretofore and thereupon being authenticated and delivered except (i) any Senior Note cancelled by the Commonwealth or a Fiduciary at or before said date, (ii) any Senior Note in lieu of or in substitution for which another Senior Note shall have been authenticated and delivered and (iii) Senior Notes deemed to have been paid as described under “Defeasance”.

“Paying Agent” shall mean any paying agent or co-paying agent for Senior Notes of any Series appointed pursuant to the Trust Agreement or an Applicable Supplemental Trust Agreement and its successor or successors and any other corporation which may at any time be substituted in its place pursuant to the Trust Agreement.

“Permitted Investments” shall mean and include any of the following, if and to the extent the same are at the time legal for investment of Commonwealth funds:

- (i) Government Obligations;
- (ii) direct obligations of, or obligations guaranteed as to timely payment of principal and interest by, FHLMC, Fannie Mae or the Federal Farm Credit System;
- (iii) demand and time deposits in or certificates of deposit of, or bankers’ acceptances issued by, any bank or trust company, savings and loan association or savings bank, if such deposits or instruments are rated in one of the two highest Rating Categories by any Rating Agency then maintaining a rating on any Senior Notes Outstanding and the long-term unsecured debt obligations of the institution holding the related account are rated in one of the two highest Rating Categories by any Rating Agency then maintaining a rating on any Senior Notes Outstanding;
- (iv) general obligations of, or obligations guaranteed by, any state of the United States or the District of Columbia rated in one of the two highest long-term Rating Categories by any Rating Agency then maintaining a rating on any Senior Notes Outstanding;
- (v) commercial or finance company paper (including both non-interest-bearing discount obligations and interest bearing obligations payable on demand or on a specified date not more than one year after the date of issuance thereof) that is rated in one of the two highest Rating Categories by any Rating Agency then maintaining a rating on any Senior Notes Outstanding;
- (vi) repurchase obligations with respect to any security described in clause (i) or (ii) above entered into with a broker/dealer, depository institution or trust company (acting as principal) meeting the rating standards described in clause (iii) above;
- (vii) securities bearing interest or sold at a discount that are issued by any corporation incorporated under the laws of the United States of America or any state thereof and rated in one of the two highest Rating Categories by any Rating Agency then maintaining a rating on any Senior

Notes Outstanding at the time of such investment or contractual commitment providing for such investment; provided, however, that securities issued by any such corporation will not be Permitted Investments to the extent that investment therein would cause the then outstanding principal amount of securities issued by such corporation that are then held to exceed 20% of the aggregate principal amount of all Permitted Investments then held;

- (viii) units of taxable money market funds which funds are regulated investment companies and seek to maintain a constant net asset value per share and have been rated in one of the two highest Rating Categories by any Rating Agency then maintaining a rating on any Senior Notes Outstanding;
- (ix) investment agreements or guaranteed investment contracts rated, or with any financial institution whose senior long-term debt obligations are rated, or guaranteed by a financial institution whose senior long-term debt obligations are rated, at the time such agreement or contract is entered into, in one of the two highest Rating Categories for comparable types of obligations by any Rating Agency then maintaining a rating on any Senior Notes Outstanding;
- (x) investment agreements with a corporation whose principal business is to enter into such agreements if (a) such corporation and the investment agreements of such corporation are each rated in one of the two highest Rating Categories by any Rating Agency then maintaining a rating on any Senior Notes Outstanding and (b) the Commonwealth has an option to terminate each agreement in the event that such rating is downgraded below such two highest Rating Categories; or
- (xi) any agreement providing for the purchase by the Commonwealth or the Trustee of Permitted Investments described above from a financial institution at the time of execution of the agreement, from time to time during the term of the agreement or any combination thereof in exchange for valuable consideration from the financial institution, which consideration may be (a) payable at the time of execution of the agreement, from time to time during the term of the agreement or any combination thereof, (b) expressed in terms of a yield to the Commonwealth or the Trustee on the purchase of such Permitted Investments, (c) an agreement by the financial institution to purchase the Permitted Investments at a price specified in the agreement, or (d) in such other form as the Commonwealth or the Trustee and the financial institution may agree; provided that, a specific written agreement governs the transactions;

provided that no Permitted Investment may (a) evidence the right to receive only interest with respect to the obligations underlying such instrument or (b) be purchased at a price greater than par if such instrument may be prepaid or called at a price less than its purchase price prior to its stated maturity.

“Pledged Funds” shall have the meaning set forth below under “Pledge”.

“Pledged Revenues” shall mean all Federal Highway Reimbursements hereafter received by the Commonwealth and any other moneys deposited to or held for the credit of the Federal Highway Grant Anticipation Note Trust Fund (other than in the Project Fund) so long as any Senior Notes remain Outstanding.

“Principal Installment” shall mean, as of any particular date of computation and with respect to Senior Notes of a particular Series, an amount of money equal to the aggregate of (i) the principal amount of Outstanding Senior Notes of said Series which mature on a single future date, reduced by the aggregate principal amount of such Outstanding Senior Notes which would at or before said future date be retired by reason of the payment when due and application in accordance with the Trust Agreement of Sinking Fund Payments payable at or before said future date for the retirement of such Outstanding Senior Notes, plus (ii) the amount of any Sinking Fund Payment payable on said future date for the retirement of any Outstanding Senior Notes of said Series.

“Prior Notes” shall mean, collectively, the 1998A Notes, the 1998B Notes, the 2000A Notes and the 2003A Notes.

“Qualified Hedge Agreement” shall mean an interest rate exchange or similar agreement between the Commonwealth and a Hedge Provider relating to the Senior Notes and based upon a notional amount, where (i)(a) the Hedge Provider, or the person who guarantees the obligation of the Hedge Provider to make any payments due to the Commonwealth, has unsecured long-term obligations rated, or (b) the hedge agreement itself is rated, in each case as of the date the hedge agreement is entered into, by any Rating Agency then maintaining a rating on the Senior Notes Outstanding in one of the two highest Rating Categories of any such Rating Agency then maintaining a rating on the Senior Notes Outstanding but in no event lower than the Rating Category designated by such Rating Agency for the Senior Notes Outstanding subject to such hedge agreement or (ii) the Commonwealth receives a Rating Confirmation with respect to entering into such agreement.

“Rating Agency” shall mean any of Moody’s Investors Service, Inc., Standard & Poor’s Ratings Group and Fitch Ratings Inc. and their respective successors or assigns.

“Rating Categories” shall mean rating categories as published by a Rating Agency in its written compilations of ratings and any written supplement or amendment thereto and any such Rating Category shall be determined on the generic rating without regard to any modifiers and, unless otherwise specified herein or in an Applicable Supplemental Trust Agreement, shall be long term ratings.

“Rating Confirmation” means evidence that no Senior Note rating then in effect from a Rating Agency will be withdrawn or reduced solely as a result of an action to be taken hereunder.

“Rebate Fund Requirement” shall mean, as of any date of calculation, an amount equal to the aggregate of the amounts, if any, calculated in accordance with each Applicable Supplemental Trust Agreement authorizing the issuance of a Series of Senior Notes as to which the rebate requirements of the Code apply as the amount required to be maintained in the Rebate Fund with respect to such Senior Notes.

“Redemption Price” shall mean, with respect to any Senior Note, the principal amount thereof plus the premium, if any, payable upon redemption thereof.

“Refunding Notes” shall mean any of the Senior Notes authorized for refunding purposes under the Trust Agreement.

“Registered Owner” or “owners” shall mean the registered owner of a Senior Note of a particular Series of Senior Notes as shown on the register for such Series of Senior Notes.

“Reimbursement Obligation” shall mean the amounts due to the provider of a Credit Enhancement or Liquidity Facility under the terms thereof as described below under “Credit Enhancement; Liquidity Facilities”.

“Reserve Credit Facility” shall mean one or more of the following:

- (i) an irrevocable, unconditional and unexpired letter of credit or other financial commitment issued by a banking institution the unsecured long-term obligations of which are rated in one of the two highest Rating Categories by any Rating Agency then maintaining a rating on the Senior Notes Outstanding or, if any such Rating Agency does not maintain a rating on such banking institution, it shall provide a Rating Confirmation, or
- (ii) an irrevocable and unconditional policy or policies of insurance in full force and effect and issued by (A) MBIA Insurance Corporation, or (B) another municipal bond insurer having a rating in one of the two highest Rating Categories from any Rating Agency then maintaining a rating on the Senior Notes Outstanding, or, if any such Rating Agency does not maintain a rating on such insurer, it shall provide a Rating Confirmation,

in each case providing for the payment of sums for the payment of Principal Installments and interest on Senior Notes in the manner provided under the Trust Agreement.

“Second Supplemental Trust Agreement” shall mean the Second Supplemental Trust Agreement, dated as of November 1, 1998, by and between the Commonwealth and the Trustee, relating to the 1998B Notes.

“Secretaries” shall mean collectively the Secretary of Administration and Finance and the Secretary of Transportation.

“Secretary of Administration and Finance” shall mean the Secretary of the Executive Office for Administration and Finance of the Commonwealth or any designee acting in the Secretary’s stead.

“Secretary of Transportation” shall mean the Secretary of the Massachusetts Department of Transportation or any designee acting in the Secretary’s stead.

“Senior CTF Bonds” shall mean the bonds of the Commonwealth issued under and secured by the Senior CTF Trust Agreement, including the issuance of subordinate bonds in accordance with the terms thereof.

“Senior CTF Obligations” shall mean the principal of, premium, if any, and interest on the Senior CTF Bonds and all other payment obligations secured in whole or in part by the Senior CTF Agreement.

“Senior CTF Trust Agreement” shall mean the Trust Agreement, dated as of December 1, 2010, by and between the Commonwealth and the Senior CTF Trustee, as from time to time amended and supplemented.

“Senior CTF Trustee” shall mean the trustee appointed in accordance with the Senior CTF Trust Agreement, and its successors and assigns.

“Senior Trust Agreement Obligations” shall mean, with respect to any period or date of calculation, the sum of the Note Debt Service Requirement during such period or on such date, plus all Note Related Costs due or to become due during such period or on such date, plus required deposits, if any, to the Rebate Fund and Debt Service Liquidity Account during such period or on such date.

“Series” when used with respect to less than all of the Senior Notes, shall mean such Senior Notes designated as a Series of Senior Notes pursuant to a Supplemental Trust Agreement.

“SIFMA Index” shall mean, on any day, the index currently known as the Securities Industry and Financial Markets Association (SIFMA) Municipal Swap Index as of the most recent date for which such index was published by Municipal Market Data, Inc., any successor to such index, or, if such index is no longer published by Municipal Market Data, Inc. or its successor, any other reasonably comparable index selected by the Commonwealth.

“Sinking Fund Payment” shall mean, as of any particular date of computation and with respect to Senior Notes of a particular Series, the amount of money required by any Supplemental Trust Agreement to be paid by the Commonwealth on a single future date for the retirement of any Outstanding Senior Notes of said Series which mature after said future date, but does not include any amount payable by the Commonwealth by reason of the redemption of Senior Notes at the election of the Commonwealth.

“Statement of Available Revenues” shall have the meaning set forth below under “Revenue Account”.

“State Treasurer” shall mean the Treasurer and Receiver-General of the Commonwealth or any Deputy Treasurer of the Commonwealth acting on the State Treasurer’s behalf.

“Subordinate Grant Anticipation Notes Trust Agreement” shall mean the Trust Agreement, dated as of December 1, 2010, by and between the Commonwealth and the Subordinate Grant Anticipation Note Trustee, as from time to time amended and supplemented.

“Subordinate Grant Anticipation Notes Trustee” shall mean the trustee appointed in accordance with the Subordinate Grant Anticipation Notes Trust Agreement, and its successors and assigns.

“Subordinate Senior Trust Agreement Obligations” shall mean the Senior Trust Agreement Obligations as defined in the Subordinate Grant Anticipation Notes Trust Agreement, as amended or revised from time to time.

“Supplemental Trust Agreement” shall mean any Trust Agreement of the Commonwealth amending or supplementing the Trust Agreement adopted and becoming effective in accordance with the terms of Article IX.

“Tax Exempt Notes” shall mean any Senior Notes accompanied by a Bond Counsel’s opinion upon the original issuance thereof that the interest on such Senior Notes is not includable in the gross income of the holder thereof for Federal income tax purposes.

“Third Supplemental Trust Agreement” shall mean the Third Supplemental Trust Agreement, dated as of November 1, 2000, by and between the Commonwealth and the Trustee, relating to the 2000A Notes.

“True-Up Condition” shall have the meaning set forth below under “Alternative Revenues”.

“Trustee” shall mean the trustee appointed in accordance with the Trust Agreement, and its successor or successors and any other corporation which may at any time be substituted in its place pursuant to the Trust Agreement.

“Valuation Date” shall mean (i) with respect to any Senior Notes that are Capital Appreciation Notes, the date or dates set forth in the Applicable Supplemental Trust Agreement on which specific Accreted Values are assigned to such Senior Notes and (ii) with respect to any Senior Notes that are Deferred Income Notes, the date or dates prior to the Interest Commencement Date set forth in the Applicable Supplemental Trust Agreement on which specific Appreciated Values are assigned to such Senior Notes.

“Variable Rate Ceiling” shall mean the maximum interest rate payable on Variable Rate Notes.

## **Pledge**

There are pledged for the payment of principal and Redemption Price of and interest on the Senior Notes (i) the Pledged Revenues, (ii) all moneys, securities, Reserve Credit Facilities and any investment earnings with respect thereto in all Funds and Accounts established by or pursuant to the Trust Agreement other than the Project Fund and the Rebate Fund, (iii) any amounts payable to the Commonwealth by a Hedge Provider pursuant to a Qualified Hedge Agreement, and (iv) solely upon the occurrence and during the continuation of a True-up Condition, the Alternative Revenues (collectively, the “Pledged Funds”). The full faith and credit of the Commonwealth has not been pledged to the payment of the Senior Notes.

The Commonwealth may in any Supplemental Trust Agreement pledge any Additional Pledged Funds or portions thereof which the Commonwealth may lawfully pledge to the payment of amounts due under the Trust Agreement. From and after the date of such Supplemental Trust Agreement such amounts shall be deemed part of the Pledged Funds under the Trust Agreement.

## **Trust Agreement to Constitute Contract**

The Trust Agreement constitutes a contract between the Commonwealth and the registered owners from time to time of the Senior Notes, and the pledge made therein and the covenants and agreements therein set forth to be performed by or on behalf of the Commonwealth shall be for the equal benefit, protection and security of the registered owners of any and all of the Senior Notes, all of which, regardless of the time or times of their issue or maturity, shall be of equal rank without preference, priority or distinction of any of the Senior Notes over any other thereof, except as otherwise expressly provided in or permitted by the Trust Agreement.

## **Authorization of Senior Notes**

The Commonwealth is authorized to issue one or more Series of Senior Notes under the Trust Agreement, which Senior Notes may be issued without limitation as to amount except as provided in the Trust Agreement with respect as limited by law. The Commonwealth may not issue additional Senior Notes to fund costs of the CA/T Project. The Senior Notes may be issued as Fixed Rate Notes, Variable Rate Notes, Tender Notes, Capital Appreciation Notes, Deferred Income Notes or Discount Notes or any combination thereof.

The Commonwealth may issue Senior Notes (“Fixed Rate Notes”) which bear a fixed rate or rates of interest during the term thereof. The Applicable Supplemental Trust Agreement shall specify the rate or rates of interest borne by such Senior Notes.

The Commonwealth may issue Senior Notes (“Variable Rate Notes”) which provide for a variable, adjustable, convertible or other similar rates of interest, not fixed as to percentage at the date of issue for the term thereof. Any Variable Rate Notes shall bear a maximum interest rate, or Variable Rate Ceiling.

The Commonwealth may provide that any Series of Senior Notes may include an option exercisable by the registered owners thereof to have such Senior Notes (“Tender Notes”) either repurchased or redeemed prior to the maturity thereof. Any Tender Notes must be secured at all times by a Liquidity Facility providing for the repurchase or payment of any tender price of Tender Notes which have not been remarketed upon tender of such Senior Notes and any accrued and unpaid interest due on such Senior Notes upon the tender date thereof. The provider of any such Liquidity Facility shall have a rating on its short term obligations within the highest Rating Category from any Rating Agency then maintaining a rating on the Senior Notes Outstanding.

The Commonwealth may issue Senior Notes (“Capital Appreciation Notes”) which provide for the addition of accrued and unpaid interest to the principal due thereon upon such terms with respect thereto determined by an Applicable Supplemental Trust Agreement. The Applicable Supplemental Trust Agreement shall specify interest rate or rates for such Senior Notes and the Accreted Values of any such Senior Notes.

The Commonwealth may issue Senior Notes (“Discount Notes”) which either bear a zero stated rate of interest or bear a stated rate of interest such that such Senior Notes are sold at a price less than the aggregate principal amount thereof in order to provide such yield thereon as deemed appropriate and desirable thereon by the Commonwealth. In the Applicable Supplemental Trust Agreement for any Discount Notes, the Commonwealth may provide for the determination of the “principal amount” and “interest” payable on such Senior Notes.

The Commonwealth may issue Senior Notes (“Deferred Income Notes”) which provide for the deferral of interest on such Senior Notes until the Interest Commencement Date. The Applicable Supplemental Trust Agreement shall specify the interest rate or rates for such Senior Notes and Interest Commencement Date for such Senior Notes.

## **No Additional Senior Notes to Fund CA/T Project**

Other than Refunding Notes, the Commonwealth may not issue additional Senior Notes for the purpose of funding the CA/T Project under the provisions of the Trust Agreement.

## **Refunding Notes**

One or more Series of Refunding Notes may be issued for the purpose of refunding all or any part of the Senior Notes of one or more Series Outstanding upon delivery, among other items, of the following:

- (i) an opinion of Bond Counsel with respect to the validity of the Refunding Notes and the enforceability of the pledge under the Trust Agreement;
- (ii) a certificate of an Authorized Officer to the effect that the Adjusted Note Debt Service Requirement to be due and payable during any semi-annual period ending on December 15 or



June 15 with respect to the Outstanding Senior Notes plus the Refunding Notes does not exceed the Maximum Semi-Annual Debt Service or a Rating Confirmation if such Adjusted Note Debt Service Requirement does exceed Maximum Semi-Annual Debt Service; and

- (iii) an amount of money or Defeasance Obligations sufficient to effect payment at maturity or redemption of the Prior Notes to be refunded.

### **Creation of Liens; Other Indebtedness**

Except as otherwise expressly provided in the Trust Agreement and in the case of Senior CTF Obligations and Subordinate Senior Trust Agreement Obligations, the Commonwealth shall not issue any bonds, notes or other evidences of indebtedness, other than the Senior Notes, secured by a pledge of or other lien on the Pledged Funds or any other moneys, securities and funds held or set aside by the Commonwealth or by the Fiduciaries under the Trust Agreement, and shall not otherwise create or cause to be created any lien or charge on such Pledged Funds, moneys, securities and funds. The Trust Agreement permits the issuance of other indebtedness secured by a subordinate lien on Pledged Funds, and other indebtedness secured by a lien on that portion of the Gasoline Tax or any other amounts not included as Pledged Funds.

### **Credit Enhancement; Liquidity Facilities**

The Commonwealth may obtain or cause to be obtained Credit Enhancement or a Liquidity Facility providing for payment of all or a portion of the principal, premium, or interest due or to become due on such Senior Notes or providing for the purchase of such Senior Notes or a portion thereof. In connection therewith the Commonwealth may agree with the issuer of such Credit Enhancement or Liquidity Facility to reimburse such issuer directly for amounts paid under the terms of such Credit Enhancement or Liquidity Facility, together with interest thereon (“Reimbursement Obligation”). Such Reimbursement Obligation may be subject to a lien on Pledged Funds on a parity with the lien created by the Trust Agreement in favor of the Senior Notes.

### **Qualified Hedge Agreements**

The Commonwealth may from time to time enter into Qualified Hedge Agreements with a Hedge Provider with respect to all or a portion of the Senior Notes of any Series Outstanding. The obligations of the Commonwealth thereunder may be secured by a pledge of the Pledged Funds; provided, however, that such security shall be expressly subordinate to the security for the Senior Notes Outstanding.

Any amounts paid to the Commonwealth pursuant to a Qualified Hedge Agreement shall be deposited in the Revenue Account. Any amounts payable by the Commonwealth under a Qualified Hedge Agreement may be payable from any amounts lawfully available to the State Treasurer for such purpose. Upon the issuance of any Refunding Notes, an Authorized Officer shall deliver to the Trustee a certificate setting forth the interest rate (the “Assumed Hedge Rate”) which such Authorized Officer reasonably determines will be the average interest rate which will be payable for the next succeeding twelve consecutive months on the notional amount under any Qualified Hedge Agreement relating to any Fixed Rate Notes which will remain Outstanding under which the Commonwealth is required to pay a variable interest rate on such notional amount.

### **Establishment of Funds and Accounts**

The following funds and accounts have been established and are currently held by the Trustee:

- (i) Redemption Fund;
- (ii) Debt Service Fund;
  - (a) June 15 Debt Service Payment Account;
  - (b) December 15 Debt Service Payment Account; and

- (c) Defeasance Account
- (iii) Alternative Revenues Fund;
- (d) Reserve Account; and
- (e) Debt Service Liquidity Account
- (iv) Note Related Costs Fund; and
- (v) Rebate Fund.

Such Funds, except the Rebate Fund, are subject to the pledge created by the Trust Agreement.

The State Treasurer has established the Revenue Account to be maintained as part of the Federal Highway Grant Anticipation Note Trust Fund and held by the Trustee so long as Senior Notes shall remain Outstanding, which Account shall be subject to the pledge created by the Trust Agreement. The State Treasurer has also established the Project Fund to be maintained as part of the Federal Highway Grant Anticipation Note Trust Fund and held by the State Treasurer so long as Senior Notes shall remain Outstanding, which Fund shall not be subject to the pledge created by the Trust Agreement.

### **Project Fund**

Except as otherwise provided in the Applicable Supplemental Trust Agreement, the State Treasurer shall deposit in the Project Fund the amounts, if any, provided in such Applicable Supplemental Trust Agreement as necessary to pay the Costs of Issuance of such Series. Such amounts shall be applied by the State Treasurer to the payment of the Costs of Issuance to the extent authorized by an Applicable Supplemental Trust Agreement. Investment earnings received by the State Treasurer on any proceeds of Senior Notes shall be promptly transferred to the Trustee for deposit in the Revenue Account.

### **Revenue Account**

The State Treasurer shall deliver to the Trustee within two business days of receipt, Pledged Revenues collected by the Commonwealth. Immediately upon receipt thereof, the Trustee shall deposit in the Revenue Account all Pledged Revenues paid to the Commonwealth and any other moneys deposited with or paid to the Trustee for application in accordance with the Trust Agreement.

On or before October 10 of each Federal Fiscal Year (or the next following Business Day), the State Treasurer, with the written concurrence of the Secretaries, shall deliver to the Trustee a statement of available revenues with respect to said Federal Fiscal Year (the "Statement of Available Revenues"), which shall set forth the amount of Federal Highway Reimbursements expected to be received by the Commonwealth during such Federal Fiscal Year and shall be based upon such information as the State Treasurer shall deem relevant, including without limitation, information obtained from the Executive Office for Administration and Finance and the Massachusetts Department of Transportation. The Statement of Available Revenues shall set forth (i) the amount of Federal Highway Reimbursements expected to be received by the Commonwealth for the then current Federal Fiscal Year, (ii) any deficiency in any Funds and Accounts with respect to Senior Trust Agreement Obligations due and payable in the then current Federal Fiscal Year, and (iii) the Senior Trust Agreement Obligations then expected to be due and payable during the following Federal Fiscal Year. The statement of Senior Trust Agreement Obligations shall set forth separate amounts for the Note Debt Service Requirement, the aggregate Note Related Costs expected to be due and payable during such period and deposits, if any, to the Rebate Fund and Debt Service Liquidity Account. The State Treasurer, with the written concurrence of the Secretaries, shall from time to time promptly deliver to the Trustee a revised Statement of Available Revenues upon receipt of notice or knowledge of any changed circumstance that would, in the judgment of the State Treasurer, materially change the prior Statement of Available Revenues.

Notwithstanding any other provision of the Trust Agreement to the contrary, if the Statement of Available Revenues includes any deficiency in any Fund or Account with respect to Senior Trust Agreement Obligations due and payable in the then current Federal Fiscal Year, all Federal Highway Reimbursements received from and after the date of such Statement of Available Revenues shall be applied first to satisfy any such deficiency. For purposes of the Trust Agreement, the amount of Federal Highway Reimbursements expected to be received by the Commonwealth for any Federal Fiscal Year shall be net of the amount of any deficiency (whether or not such deficiency has been satisfied) set forth in a Statement of Available Revenues.

If the Statement of Available Revenues projects that the amount of Federal Highway Reimbursements expected to be received by the Commonwealth during the current Federal Fiscal Year shall be equal to or greater than one hundred twenty percent (120%) of the Senior Trust Agreement Obligations due during the following Federal Fiscal Year, then the Trustee shall, at the direction of the State Treasurer, but subject to the requirements of any trust agreement relating to Subordinate Senior Trust Agreement Obligations, transfer to the State Treasurer, Federal Highway Reimbursements received by it during the period beginning on the later of October 10 and the date of delivery of the Statement of Available Revenues and ending on the earlier of December 15 and the date on which the difference between the amount of Federal Highway Reimbursements expected to be received by the Commonwealth during the then current Federal Fiscal Year, as set forth in the most recent Statement of Available Revenues delivered to the Trustee, minus the amount of Federal Highway Reimbursements received by the Commonwealth to date in such Federal Fiscal Year shall equal 120% of the Senior Trust Agreement Obligations due in the following Federal Fiscal Year, as set forth in the most recent Statement of Available Revenues delivered to the Trustee, in the amounts and at the times specified, for application as permitted by law, free and clear of the lien of the Trust Agreement.

If the certification described in the immediately preceding paragraph has been given, subject to the requirements of any trust agreement relating to Subordinate Senior Trust Agreement Obligations, commencing on the earlier of the December 15 following delivery of such certification and the date on which the difference between the amount of Federal Highway Reimbursements expected to be received by the Commonwealth during the then current Federal Fiscal Year, as set forth in the most recent Statement of Available Revenues delivered to the Trustee, minus the amount of Federal Highway Reimbursements received by the Commonwealth to date in such Federal Fiscal Year shall equal 120% of the Senior Trust Agreement Obligations due in the following Federal Fiscal Year, as set forth in the most recent Statement of Available Revenues delivered to the Trustee, the Trustee shall then transfer all Federal Highway Reimbursements received by it from the Revenue Account first to the December 15 Debt Service Account until the amount therein shall equal the December 15 Debt Service Requirement in such following Federal Fiscal Year and, second, in the following order, to the Note Related Costs Fund, the Rebate Fund and the Debt Service Liquidity Account, until the date on which all Senior Trust Agreement Obligations to be due and payable on or prior to December 15 in the following Federal Fiscal Year, as set forth in the most recent Statement of Available Revenues delivered to the Trustee, shall have been provided for. Once such transfers have been made to the December 15 Debt Service Account, the Note Related Costs Fund, the Rebate Fund and the Debt Service Liquidity Account, the Trustee shall notify the Subordinate Grant Anticipation Notes Trustee in writing that such deposit requirements have been satisfied. Thereafter, until the earlier of the following June 14 of such Federal Fiscal Year and the date on which the difference between the Federal Highway Reimbursements expected to be received by the Commonwealth during the then current Federal Fiscal Year, as set forth in the most recent Statement of Available Revenues delivered to the Trustee, minus the amount of Federal Highway Reimbursements received by the Commonwealth to date in such Federal Fiscal Year, shall equal 120% of the Senior Trust Agreement Obligations payable after December 15 of the next succeeding Federal Fiscal Year, as set forth in the most recent Statement of Available Revenues delivered to the Trustee, the Trustee shall, at the direction of the State Treasurer, but subject to the requirements of any trust agreement relating to Subordinate Senior Trust Agreement Obligations, transfer Federal Highway Reimbursements received by it during such period to the State Treasurer, in the amounts and at the times specified, for application as permitted by law, free and clear of the lien of the Trust Agreement. Commencing on the earlier of the June 15 following delivery of such certification and the date on which the difference between the Federal Highway Reimbursements expected to be received by the Commonwealth during the then current Federal Fiscal Year, as set forth in the most recent Statement of Available Revenues delivered to the Trustee, minus the amount of Federal Highway Reimbursements received by the Commonwealth to date in such Federal Fiscal Year, shall equal 120% of the Senior Trust Agreement Obligations payable after December 15 of the next succeeding Federal Fiscal Year, as set forth in the most recent Statement of Available Revenues delivered to the Trustee, the Trustee shall then transfer all Federal Highway Reimbursements received by it from the Revenue

Account first to the June 15 Debt Service Account until the amount therein shall equal the June 15 Debt Service Requirement in such following Federal Fiscal Year and second, in the following order, to the Note Related Costs Fund, the Rebate Fund and the Debt Service Liquidity Account, until the date on which all Senior Trust Agreement Obligations to be due and payable in the following Federal Fiscal Year shall have been provided for. Once such transfers have been made to the June 15 Debt Service Account, the Note Related Costs Fund, the Rebate Fund and the Debt Service Liquidity Account, the Trustee shall notify the Subordinate Grant Anticipation Notes Trustee in writing that such deposit requirements have been satisfied. Thereafter, until the following September 30, the Trustee shall, at the direction of the State Treasurer, but subject to the requirements of any trust agreement relating to Subordinate Senior Trust Agreement Obligations, transfer Federal Highway Reimbursements received by it during such period to the State Treasurer, in the amounts and at the times specified, for application as permitted by law, free and clear of the lien of the Trust Agreement.

If the Statement of Available Revenues projects that the amount of Federal Highway Reimbursements expected to be received by the Commonwealth during the current Federal Fiscal Year shall be less than one hundred twenty percent (120%) of the Senior Trust Agreement Obligations due during the following Federal Fiscal Year, then the Trustee shall transfer all Federal Highway Reimbursements received by it thereafter from the Revenue Account first to the December 15 Debt Service Account until the amount therein shall equal the December 15 Debt Service Requirement, second, to the June 15 Debt Service Account until the amount therein shall equal the June 15 Debt Service Requirement and third, in the following order, to the Note Related Costs Fund, the Rebate Fund and the Debt Service Liquidity Account, until the date on which all Senior Trust Agreement Obligations to be due and payable in the following Federal Fiscal Year, as set forth in the most recent Statement of Available Revenues delivered to the Trustee, shall have been provided for.

Notwithstanding the foregoing, if on October 1 of any Federal Fiscal Year and so long as the Trustee shall not have received any certification with respect to such Federal Fiscal Year, the Trustee shall retain all Federal Highway Reimbursements until such time as such certification is delivered, at which time the Trustee may transfer amounts then held by it in accordance with such certification as if such certification had been delivered on October 1 of such Federal Fiscal Year or otherwise at the required time. In addition, during the continuance of an Event of Default, the Trustee shall not transfer any Pledged Funds to the Commonwealth until such time as the Event of Default is cured or waived, at which time the Trustee may transfer amounts then held by it as permitted by the Trust Agreement as if such Event of Default had not occurred.

Notwithstanding anything in the Trust Agreement to the contrary, if on any December 15 or June 15 the Trustee holds funds in the Revenue Account and the amount then held in the December 15 Debt Service Account or the June 15 Debt Service Account, as applicable, is less than the December 15 Debt Service Requirement or the June 15 Debt Service Requirement, as applicable, the Trustee shall immediately transfer all or any portion of the balance then held first, in the Revenue Account and second, in the other Debt Service Account, to the applicable Debt Service Account in order to cause the balance therein to equal the December 15 Debt Service Requirement or June 15 Debt Service Requirement, as applicable.

At any time the State Treasurer, with the written concurrence of the Secretaries, but subject to the requirements of any trust agreement relating to Subordinate Senior Trust Agreement Obligations and subject also to any covenants and agreements made by the Commonwealth in connection with the issuance of such Subordinate Senior Trust Agreement Obligations, may direct the Trustee to transfer an amount of Federal Highway Reimbursements and any other available funds then on deposit in the Revenue Account and otherwise available to be transferred to the State Treasurer free and clear of the lien of the Trust Agreement, to the Redemption Fund or the Defeasance Account for the purpose of redeeming or defeasing the principal amount of Senior Notes Outstanding as set forth in said certificate, provided, however, that, except to the extent necessary to pay Senior Trust Agreement Obligations due and payable in any Commonwealth Fiscal Year, no more than fifty percent (50%), or such other percentage as may be permitted by law, of the amount apportioned by law to the Commonwealth in any Federal Fiscal Year with respect to the Federal Highway Construction Program shall be applied in the Commonwealth Fiscal Year ending on June 30 of such Federal Fiscal Year or in the Commonwealth's Fiscal Year, commencing on July of such Federal Fiscal Year to the payment of Senior Trust Agreement Obligations, including without limitation, the payment or defeasance prior to maturity of the principal of and interest on Senior Notes Outstanding. Except in connection with the redemption or defeasance of any Senior Notes as a result of the conversion of a portion of the Advance Construction Balance, any transfer of Federal Highway Reimbursements to either the Redemption Fund or

Defeasance Account shall be revocable by the State Treasurer until the later of (i) June 20 of the Commonwealth Fiscal Year in which such transfer was made and (ii) the date on which the State Treasurer shall deliver to the Trustee a notice of redemption or defeasance specifying the principal amount of Senior Notes to be redeemed or defeased and, if applicable, the redemption date of such Senior Notes (the "Notice of Redemption or Defeasance"), at which time such transfer shall be irrevocable.

The Trustee is hereby authorized to accept at any time from the State Treasurer, in addition to Pledged Funds, any other moneys certified by the State Treasurer to be lawfully available for carrying out or satisfying any purpose under the Trust Agreement. The Trustee shall deposit such moneys in the Fund or Account, as the State Treasurer may direct, and, provided no Event of Default shall then be occurring under the Trust Agreement and the amounts then held in the Debt Service Accounts, the Debt Service Liquidity Account, the Rebate Fund and the Note Related Costs Fund are at least equal to the applicable amounts then specified in the Trust Agreement, the Trustee shall transfer such amount as the State Treasurer may direct, but not in excess of the amount received from the State Treasurer, to the State Treasurer, for application as permitted by law, free and clear of the lien of the Trust Agreement.

### **Debt Service Fund**

The Trustee shall pay out of the applicable Debt Service Account in the Debt Service Fund to the respective Paying Agents for any Senior Notes (i) on or before each interest payment date of Senior Notes the amount required for the interest and Principal Installments payable on such date and (ii) on or before each redemption date for the Senior Notes, other than a redemption date on account of Sinking Fund Payments, the amount required for the payment of interest and Redemption Price on the Senior Notes then to be redeemed; provided that in each case the State Treasurer may direct the Trustee to make such payments to the Paying Agents on such date prior to the due date as the State Treasurer determines to the extent amounts are available therefor in such Fund. If the amount accumulated in the applicable Debt Service Account in the Debt Service Fund is insufficient to make the payment due from such Account for either of the purposes specified above, the Trustee shall transfer any available amount in the other Debt Service Account to the extent necessary to make up the deficiency. Amounts accumulated in the applicable Debt Service Account in the Debt Service Fund with respect to any Sinking Fund Payment (together with amounts accumulated therein with respect to interest on the Senior Notes for which such Sinking Fund Payment was established) may, and if so directed by an Authorized Officer shall, be applied by the Trustee prior to the forty-fifth (45th) day preceding the due date of such Sinking Fund Payment, to (i) the purchase of Senior Notes of the Series and maturity for which such Sinking Fund Payment was established, at prices not exceeding the applicable sinking fund Redemption Price plus interest on such Senior Notes to the first date on which such Senior Notes could be redeemed (or in the case of a Sinking Fund Payment due on the maturity date, the principal amount thereof plus interest to such date), such purchases to be made in such manner as the State Treasurer shall arrange, or (ii) the redemption of such Senior Notes then redeemable by their terms. The applicable Redemption Price or principal amount (in the case of maturing Senior Notes) of any Senior Notes so purchased or redeemed shall be deemed to constitute part of the applicable Debt Service Account in the Debt Service Fund until such Sinking Fund Payment date for the purpose of calculating the amount of such Account.

In satisfaction, in whole or in part, of any amount required to be paid into the Debt Service Fund which is attributable to a Sinking Fund Payment, there may be delivered on behalf of the Commonwealth to the Trustee Senior Notes of the Series and maturity entitled to such payment. All Senior Notes so delivered to the Trustee in satisfaction of a Sinking Fund Payment shall reduce the amount thereof by the amount of the aggregate of the sinking fund Redemption Prices of such Senior Notes.

### **Redemption Fund**

The Commonwealth may deposit in the Redemption Fund any moneys, including Pledged Funds, not otherwise required by the Trust Agreement to be otherwise deposited or applied. If at any time the amount on deposit and available therefor in the Debt Service Fund is insufficient to pay the principal or Redemption Price of and interest on the Senior Notes then due, the Trustee shall withdraw from the Redemption Fund and deposit in the applicable Debt Service Account in the Debt Service Fund the amount necessary to meet the deficiency (other than amounts held therein for the redemption of Senior Notes for which a notice of redemption shall have been given). Subject to the foregoing, amounts in the Redemption Fund may be applied by the Commonwealth to the redemption

of Senior Notes at prices not exceeding the applicable Redemption Prices (plus accrued interest) had such Senior Notes been redeemed (or, if not then subject to redemption, at the applicable Redemption Prices when next subject to redemption), such purchases to be paid for by the Trustee at such times and in such manner as arranged and directed by an Authorized Officer.

### **Alternative Revenues**

Not later than December 15 of each year, the State Treasurer, after consultation with the Secretaries, shall certify to the Governor, the Speaker of the House, the President of the Senate and the Trustee (i) the aggregate amount appropriated by law from the Federal Highway Trust Fund for the purposes of carrying out the provisions of Title 23 of the United States Code with respect to federal-aid highways for the then current Federal Fiscal Year and (ii) the projected Debt Service Coverage Ratio for the following Commonwealth Fiscal Year. If (i) the amount of federal appropriations so certified is less than \$17.1 billion and (ii) such projected Debt Service Coverage Ratio is less than 120% (the combination of the conditions specified in clauses (i) and (ii), while both such conditions persist, is herein referred to as a "True-Up Condition"), the Governor shall include in the operating budget to be submitted to the General Court in accordance with Section 7H of Chapter 29 of the Massachusetts General Laws a recommendation to appropriate an amount equal to the Senior Trust Agreement Obligations to be due in said Commonwealth Fiscal Year, less the sum of (x) the amount of any available funds on deposit in the Federal Highway Grant Anticipation Note Trust Fund, the Debt Service Fund and the Note Related Costs Fund as of the date of the certification of the State Treasurer, minus (y) the portion of such amounts expected to be expended prior to the beginning of said Commonwealth Fiscal Year on Senior Trust Agreement Obligations due in the current Commonwealth Fiscal Year, plus (z) any amount of Federal Highway Reimbursements expected to be received prior to the beginning of said Commonwealth Fiscal Year that will not be expended prior to the beginning of said Commonwealth Fiscal Year. Upon the occurrence of a True-Up Condition, the Trustee shall promptly notify the trustee for the Senior CTF Bonds of the occurrence of a True-Up Condition and that it will be the responsibility of the Commonwealth to transfer available Alternative Revenues to the Trustee at the times and in the manner required by the provisions of the Trust Agreement. The Commonwealth thereafter shall take all steps necessary to ensure that the Alternative Revenues are available for deposit with the Trustee as hereinafter described.

At any time prior to the enactment of the General Appropriation Act, the State Treasurer shall, if necessary, after consultation with the Secretaries, supplement the certification referenced in the immediately preceding paragraph to reflect any changed circumstances known to the State Treasurer with respect to the amount of Federal Highway Reimbursements expected to be available to pay Senior Trust Agreement Obligations in the applicable Commonwealth Fiscal Year. Such certification shall be made promptly after the State Treasurer becomes aware of any changed circumstances that are material to such amount.

If the certifications specified in the two immediately preceding paragraphs were given and indicated a need for an appropriation of funds by the General Court, then (i) commencing in the January following delivery of such certification the Alternative Revenues received by the Commonwealth shall, as provided in the Trust Agreement, be deposited with the Trustee in the Reserve Account promptly upon receipt by the Commonwealth until the amount in the Reserve Account shall equal the sum of (A) the December 15 Debt Service Requirement in the following Commonwealth Fiscal Year (less any amount available for such purpose on deposit in the December 15 Debt Service Account) and (B) all Senior Trust Agreement Obligations to be due and payable prior to December 15 in the following Commonwealth Fiscal Year (less any amounts available for such purpose on deposit in the Note Related Costs Fund, the Rebate Fund and the Debt Service Liquidity Account) and (ii) commencing with the July following delivery of such certification the Alternatives Revenues received by the Commonwealth shall, as provided in the Trust Agreement, be deposited with the Trustee in the Reserve Account promptly upon receipt by the Commonwealth and applied thereafter as further provided in the Trust Agreement, all as described below under "Alternative Revenues Fund"; provided that notwithstanding any provision of the Trust Agreement to the contrary, in the event the Trustee holds an amount under the Trust Agreement during any Commonwealth Fiscal Year at least equal to the Senior Trust Agreement Obligations due and payable during such Commonwealth Fiscal Year, which amount is available for paying such Senior Trust Agreement Obligations without any further appropriation or other legislative approval, the State Treasurer shall no longer be required to pay Alternative Revenues to the Trustee during the remainder of such Commonwealth Fiscal Year.

Notwithstanding the foregoing provisions to the contrary, in the event an appropriation is enacted into law with respect to any Commonwealth Fiscal Year from any available funds of an amount sufficient, together with other available funds in the Federal Highway Grant Anticipation Note Trust Fund as of the end of the immediately preceding Commonwealth Fiscal Year to pay the Senior Trust Agreement Obligations due and payable during said Commonwealth Fiscal Year, the State Treasurer may deposit the amount of such appropriation with the Trustee and direct the Trustee to transfer all or any portion of the Alternative Revenues then on deposit in the Reserve Account in the Alternative Revenues Fund to the State Treasurer for credit to the Commonwealth Transportation Fund to be applied as provided by law; provided that no such transfer shall be made unless and until the amount then held by the Trustee under the Trust Agreement is sufficient to pay all Senior Trust Agreement Obligations due and payable during said Commonwealth Fiscal Year.

### **Alternative Revenues Fund**

If Alternative Revenues are required to be deposited with the Trustee, the Commissioner of Revenue shall deliver to the Trustee within eight (8) business days after the end of each month, commencing with the end of December or July, as the case may be, in the applicable Commonwealth Fiscal Year, a certificate stating the amount of Alternative Revenue collected by the Commonwealth during such month (taking into consideration the amount subject to application in connection with the Senior CTF Obligations). Such amount shall be paid by the State Treasurer to the Trustee within two (2) business days thereafter from amounts credited to the Commonwealth Transportation Fund and deposited by the Trustee in the Reserve Account and applied as set forth below.

If Alternative Revenues are required to be deposited with the Trustee, and so long as the Act or other applicable law shall require that the expenditure of Alternative Revenues is subject to appropriation for the purposes described below, at the beginning of each Commonwealth Fiscal Year after the adoption of the operating budget for the Commonwealth for such Commonwealth Fiscal Year, the Secretary of Administration and Finance and the State Treasurer shall certify to the Trustee the amount appropriated for such Fiscal Year for payment of the following amounts:

- (i) the Note Debt Service Requirement for such Fiscal Year;
- (ii) that portion of the Debt Service Liquidity Account Requirement, if any, to be funded during such Commonwealth Fiscal Year;
- (iii) the Note Related Costs, if any, for such Fiscal Year; and
- (iv) the Rebate Fund Requirement, if any, for such Fiscal Year.

If amounts are appropriated for such purposes as an aggregate sum, such sum shall be allocated in the order set forth above for the amounts set forth above and such certificate shall set forth such allocation. To the extent additional amounts are appropriated during a Commonwealth Fiscal Year for any such purpose, the Secretary of Administration and Finance and the State Treasurer shall also certify to the Trustee the amount of any such supplemental appropriation. The aggregate amounts appropriated for each such purpose as provided herein shall be referred to as an "Appropriated Amount" for such purpose.

If Alternative Revenues are required to be deposited with the Trustee, then on or before the September 30 following the commencement of such deposits the Trustee shall transfer from amounts available in the Reserve Account to the following Funds and in the following order:

- (i) to the December 15 Debt Service Account, an amount which together with other amounts on deposit in such Account, will equal the December 15 Debt Service Account Requirement for the next succeeding December 15; provided, however, that the aggregate amount deposited therein with respect to December 15 in any Commonwealth Fiscal Year shall not exceed the Appropriated Amount during such Commonwealth Fiscal Year for such purpose unless the State Treasurer shall certify to the Trustee that deposits of such amounts shall not then be subject to appropriation;

- (ii) to the June 15 Debt Service Account an amount which together with other amounts on deposit in such Account, will equal the June 15 Debt Service Requirement for the next succeeding June 15; provided, however, that the aggregate amount deposited therein with respect to June 15 in any Commonwealth Fiscal Year shall not exceed the Appropriated Amount during such Commonwealth Fiscal Year for such purpose unless the State Treasurer shall certify to the Trustee that deposits of such amounts shall not then be subject to appropriation;
- (iii) to the Debt Service Liquidity Account, an amount equal to any amount necessary to cause the amount on deposit therein to equal the Funded Debt Service Liquidity Account Requirement for such Commonwealth Fiscal Year; provided, that the aggregate amount deposited in the Debt Service Liquidity Account with respect to any Commonwealth Fiscal Year shall not exceed the Appropriated Amount during such Commonwealth Fiscal Year for such purpose unless the State Treasurer shall certify in writing to the Trustee that any deposits of any such amounts shall not be subject to appropriation;
- (iv) to the Note Related Costs Fund, at such times and in such amounts, if any, as determined by the State Treasurer or otherwise set forth in an Applicable Supplemental Trust Agreement as necessary to pay Note Related Costs for such Commonwealth Fiscal Year; provided, however, that the aggregate amount deposited therein with respect to any Commonwealth Fiscal Year shall not exceed the Appropriated Amount during such Commonwealth Fiscal Year unless the State Treasurer shall certify to the Trustee that deposits of such amounts shall not then be subject to appropriation; and
- (v) to the Rebate Fund, the amount of the Rebate Fund Requirement, if any, for such Commonwealth Fiscal Year, determined in accordance with an Applicable Supplemental Trust Agreement; provided, however, that the aggregate amount deposited therein with respect to any Commonwealth Fiscal Year shall not exceed the Appropriated Amount during such Commonwealth Fiscal Year unless the State Treasurer shall certify to the Trustee that deposits of such amounts shall not then be subject to appropriation.

Upon deposit of the amounts described above and so long as there shall be Appropriated Amounts sufficient to pay the amounts set forth in subparagraphs (i) and (ii) above (if such appropriations shall be required by the Act or other provisions of law), the balance on deposit in the Reserve Account (less any amounts required to be deposited under subparagraphs (iii), (iv) and (v) above for which there are not sufficient Appropriated Amounts) shall be transferred by the Trustee on the last business day of each month to the State Treasurer free and clear of the lien of the Trust Agreement and may be thereupon applied to any purpose permitted by law.

If at any time after Alternative Revenues are required to be deposited with the Trustee, the amounts on deposit and available therefor in the Debt Service Fund, the Note Related Costs Fund or the Redemption Fund are insufficient to pay the principal, the Redemption Price of, and interest on the Senior Notes then due, the Trustee shall withdraw from the Debt Service Liquidity Account and deposit in the applicable Debt Service Account in the Debt Service Fund the amount necessary to meet the deficiency. Amounts so withdrawn from the Debt Service Liquidity Account shall be derived, first, from cash or Permitted Investments on deposit therein and, second, from draws or demands on Reserve Credit Facilities held as a part thereof upon the terms and conditions set forth in any such Reserve Credit Facility or as set forth in the Applicable Supplemental Trust Agreement setting forth such Reserve Credit Facility. If the Trustee shall draw on any cash or Permitted Investments and Reserve Credit Facilities in the Debt Service Liquidity Account, any amounts paid to the Trustee to replenish the amounts drawn shall be paid first pro rata to the providers of the Reserve Credit Facilities as authorized under a Supplemental Trust Agreement and, second, shall be deposited therein as a cash deposit.

If on any interest payment date, the amount on deposit in the Debt Service Liquidity Account is in excess of the Funded Debt Service Liquidity Account Requirement (calculated as of such interest payment date after the payment of the amount due on such date for the interest and Principal Installments on all Senior Notes Outstanding), the Trustee shall transfer such excess from the Debt Service Liquidity Account to the State Treasurer free and clear of the lien of the Trust Agreement and such amount may be thereupon applied to any purpose permitted by law.



Whenever the Trustee shall determine that the amount of cash and Permitted Investments on deposit in the Debt Service Liquidity Account, together with all other funds available for the purpose, is equal to or in excess of the Redemption Price of all Senior Notes Outstanding, the Trustee, at the direction of an Authorized Officer, shall transfer the balance of such cash and Permitted Investments from the Debt Service Liquidity Account to the Redemption Fund in connection with the redemption of all Senior Notes Outstanding.

At any time, the Trustee shall, upon the written direction of an Authorized Officer, transfer any amount in the Debt Service Liquidity Account to the Note Related Costs Fund in exchange for one or more Reserve Credit Facilities with aggregate stated and unpaid amounts not less than the amount so transferred.

Notwithstanding any provision in the Trust Agreement to the contrary, in no event shall Alternative Revenues be applied in any Commonwealth Fiscal Year to any purpose in excess of the Appropriated Amount for such purpose during such Fiscal Year, unless the State Treasurer shall certify in writing to the Trustee that any such application shall not be subject to appropriation.

### **Note Related Costs Fund**

The amount on deposit and available in the Note Related Costs Fund shall be applied by the Trustee to the payment of Note Related Costs at the times and in the amounts as directed from time to time by an Authorized Officer.

If at any time the amount on deposit and available therefor in the Debt Service Fund is insufficient to pay the principal or Redemption Price of and interest on the Senior Notes then due, the Trustee shall withdraw from the Note Related Costs Fund, after withdrawal of amounts from the Redemption Fund described above, and deposit in the applicable Debt Service Account in the Debt Service Fund the amount necessary to meet such deficiency; provided, however, that the aggregate of such amount deposited therein from Alternative Revenues shall not in any Commonwealth Fiscal Year, together with all other amounts deposited therein during such Commonwealth Fiscal Year, exceed the Appropriated Amount for the purpose of paying the principal and Redemption Price of and interest due on the Senior Notes Outstanding during such Commonwealth Fiscal Year.

Upon the certification of an Authorized Officer and all Fiduciaries that all Note Related Costs have been paid, any balance in the Note Related Costs Fund shall be paid by the Trustee to the State Treasurer free and clear of the lien of the Trust Agreement and such amounts shall be applied to any purposes permitted by law.

### **Investments**

Except as otherwise described below under "Defeasance," money held for the credit of any Fund or Account under the Trust Agreement shall, to the fullest extent practicable, be invested in Permitted Investments which shall mature or be redeemable at the option of the holder thereof, on such dates and in such amounts as may be necessary to provide moneys to meet the payments required to be made from such Funds and Accounts. Amounts on deposit in the Debt Service Fund, the Debt Service Liquidity Account or the Reserve Account may be invested only in Permitted Investments of the type described in subparagraphs (i), (ii), (iii), (iv), (vi), (vii), (ix) or (xi) of the definition of Permitted Investments. Amounts on deposit in the Debt Service Liquidity Account or Reserve Account may not be invested in any such Permitted Investments which mature or are otherwise not redeemable at the option of the holder thereof, after the next succeeding Note Payment Date following the purchase thereof. Any income from Permitted Investments may be transferred to the Rebate Fund to the extent required by an applicable Supplemental Trust Agreement.

In computing the amount in any Fund or Account for any purpose, Permitted Investments shall be valued at amortized cost. Unless otherwise provided in the Trust Agreement, Permitted Investments in any Fund or Account shall be valued at least once in each Commonwealth Fiscal Year on the last day thereof. Notwithstanding the foregoing, Permitted Investments in the Debt Service Liquidity Account shall be valued at amortized cost for all purposes of the Trust Agreement unless and until a withdrawal from such Fund shall be required, in which event such investments shall thereafter be valued at amortized cost or market, whichever is lower, until the balance in such Account, on the basis of such valuation, shall equal the Funded Debt Service Liquidity Account Requirement.

### **Powers as to Notes and Pledge**

The Commonwealth represents in the Trust Agreement that it is duly authorized under the Act and all applicable laws to create and issue Senior Notes thereunder and to enter into the Trust Agreement and to pledge the Pledged Funds in the manner and to the extent provided in the Trust Agreement. Except for the senior pledge and lien on the Gasoline Tax in favor of the owners of the Senior CTF Obligations, the Commonwealth covenants that the Pledged Funds are and will be free and clear of any pledge, lien, charge or encumbrance thereon with respect thereto prior to, or of equal rank with, the pledge created by the Trust Agreement. The Commonwealth agrees that at all times, to the extent permitted by law, it will defend, preserve and protect the pledge of the Pledged Funds under the Trust Agreement and all the rights of the Noteholders under the Trust Agreement against all claims and demands of all persons whomsoever.

### **Covenants as to Pledged Funds and Federal Highway Grant Anticipation Note Trust Fund**

In accordance with Section 10D of the Act, so long as any Senior Notes shall remain Outstanding, and so long as any Senior Trust Agreement Obligations shall remain unpaid, the Commonwealth covenants that (i) Federal Highway Reimbursements shall not be diverted from the purposes identified in the Act and in the Trust Agreement (except as provided in the Trust Agreement) nor shall the trusts with which they are impressed be broken, and the pledge and dedication in trust of such funds shall continue unimpaired and unabrogated, (ii) in any Commonwealth Fiscal Year with respect to which the certifications described under "Alternative Revenues" were given and indicated a need for an appropriation of funds by the General Court, unless and until such an appropriation has been made or an amount is otherwise made available which is sufficient to pay the Senior Trust Agreement Obligations due during said Commonwealth Fiscal Year, no receipts derived from the portion of the Gasoline Tax equal to ten cents (\$0.10) per gallon, other than any amount of such tax pledged to the payment of Senior CTF Obligations, shall be applied to any use other than the payment of such Senior Trust Agreement Obligations, (iii) until the State Treasurer, after consultation with the Secretary of Administration and Finance and the Secretary of Transportation, determines that available funds in the Federal Highway Grant Anticipation Note Trust Fund and all Funds and Accounts established under the Trust Agreement, as of the date of such determination, will be sufficient to pay all Senior Trust Agreement Obligations, the rate of the Gasoline Tax shall not be reduced below the sum of ten cents per gallon plus any amount pledged to the payment of the Senior CTF Obligations and (iv) at least ten cents of said Gasoline Tax shall remain free and clear of any superior or equal pledge, lien, charge or encumbrance thereon or with respect thereto (other than the pledge securing the Senior Trust Agreement Obligations and the Senior CTF Obligations) and shall remain credited to the Commonwealth Transportation Fund, except as permitted by the Trust Agreement; provided, however, that any such funds shall be available for appropriation in any Commonwealth Fiscal Year for any other lawful purpose unless the State Treasurer shall have provided the certification specified in Section 10C of the Act and as described above under "Alternative Revenues" to the effect that a True-Up Condition shall be in effect.

### **Advance Construction Balance**

The Commonwealth covenants that, except to the extent otherwise required by applicable federal law or regulations, so long as any Senior Notes remain Outstanding, it will not cause or permit the Advance Construction Balance, as of any date of calculation, to be less than the principal amount of Senior Notes Outstanding as of such date, after taking into account the principal amount of Senior Notes, if any, to be paid, defeased or redeemed as a result of the conversion on such date of a portion of the Advance Construction Balance to Obligation Authority and taking into account any funds then on deposit in the Debt Service Fund and Redemption Fund to be applied to pay the principal of any Senior Notes then Outstanding, as certified by the State Treasurer to the Trustee at the time of such conversion. MassDOT covenants that it shall not cause or permit the Advance Construction Balance to be converted to Obligation Authority without the prior written concurrence of the Secretary of Administration and Finance and the State Treasurer, provided, however, that such concurrence shall not be required if the portion of the remaining Advance Construction Balance that relates solely to projects under the Federal Highway Construction Program on which the Commonwealth has already, as of the date of such conversion, paid or advanced funds and with respect to which the Commonwealth would be entitled to immediate reimbursement from the Federal government if such portion of the Advance Construction Balance could be converted to Obligation Authority, is at least equal to the principal amount of Senior Notes Outstanding, without taking into account any payment, redemption or defeasance of Senior Notes as a result of such conversion, less the amount then held in the Project

Fund to pay costs of the CA/T Project. At the time of any conversion of the Advance Construction Balance that requires such concurrence of the Secretary of Administration and Finance and the State Treasurer, the State Treasurer shall deliver to the Trustee a certificate specifying the amount of the conversion and the amount, if any, of Federal Highway Reimbursements related thereto to be applied to the payment, redemption or defeasance of any portion of the principal of the Senior Notes Outstanding, and, if applicable, the redemption date or effective date of defeasance of any Senior Notes Outstanding. At the time of transfer of the Federal Highway Reimbursements related to the conversion of the Advance Construction Balance to the Trustee, the State Treasurer shall identify the Federal Highway Reimbursements as such, and direct the Trustee to deposit the Federal Highway Reimbursements into the applicable Debt Service Account, Redemption Fund or Defeasance Account, and the Trustee is authorized to accept and follow such directions.

### **Tax Covenants; Rebate Fund**

The Commonwealth shall take, or require to be taken, such action as may from time to time be required to assure the continued exclusion of interest on any Series of Tax Exempt Notes from the federal gross income of Holders of any such Series of Tax Exempt Notes. The Commonwealth shall not permit the investment or application of the proceeds of any Series of Tax Exempt Notes, including any funds considered proceeds within the meaning of section 148 of the Code, to be used to acquire any investment property the acquisition of which would cause such indebtedness to be “arbitrage bonds” within the meaning of said section 148. The Commonwealth shall establish within the Rebate Fund a separate account within the Rebate Fund for such Series and may provide in the Applicable Supplemental Trust Agreement for the deposits of amounts therein to pay “rebate” on the investment of amounts in accordance with Section 148(1) of the Code. Funds on deposit in the Rebate Fund shall be applied as set forth in the Applicable Supplemental Trust Agreement. Unless otherwise specified in the Applicable Supplemental Trust Agreement, interest or other income derived from the investment or deposit of moneys in the Rebate Fund shall be held therein. The Rebate Fund and the amounts on deposit therein shall not be deemed Pledged Funds hereunder.

### **Limitations on Covenants**

Notwithstanding any provision of the Trust Agreement to the contrary, any provisions of the Act creating covenants with Noteholders shall be deemed a covenant with the Noteholders only to the extent expressly provided n and as limited by the Trust Agreement

### **Limitation on Issuance of Senior CTF Bonds**

So long as the issuer of the Reserve Credit Facility (a) has not failed to perform its obligations under the Reserve Credit Facility or (b) has not been determined by a court of competent jurisdiction to be insolvent, until the earliest of the day when (w) there are sufficient funds on deposit in the June 15 Debt Service Account and/or the December 15 Debt Service Account to pay principal of and interest on all Outstanding Prior Federal Highway Grant Anticipation Notes, or (x) no Notes remain Outstanding, or (y) the existing Reserve Credit Facility has been replaced or released, or (z) the issuer of the Reserve Credit Facility consents in writing, the Commonwealth covenants and agrees that it will not issue Senior CTF Bonds in excess of \$2.984 billion less the aggregate principal amount of grant anticipation notes issued under the Subordinate Grant Anticipation Notes Trust Agreement if Moody’s Investors Service Inc. lowers its rating on the Senior CTF Bonds below “Aa3” or Standard & Poor’s Ratings Group, Inc. lowers its rating on the Senior CTF Bonds below “AA-”.

### **Events of Default**

One or more of the following events shall constitute an Event of Default under the Trust Agreement:

- (i) If default shall be made in the payment of the principal or Redemption Price of any Senior Note when due, whether at maturity or by call for mandatory redemption or redemption or purchase at the option of the Commonwealth or any registered owner, or otherwise, or in the payment of any Sinking Fund Payment when due; or

- (ii) If default shall be made in the payment of any installment of interest on any Senior Note when due; or
- (iii) If default shall be made by the Commonwealth in the performance or observance of the covenants, agreements and conditions on its part described under the first paragraph of “Covenants as to Pledged Funds and Federal Highway Grant Anticipation Note Trust Fund” above; or
- (iv) If default shall be made by the Commonwealth in the performance or observance of any other of the covenants, agreements or conditions on its part provided in the Trust Agreement or in the Senior Notes and such default shall continue for a period of thirty (30) days after written notice thereof shall be given to the Commonwealth by the Trustee or to the Commonwealth and the Trustee by the registered owners of a majority in principal amount of the Senior Notes Outstanding; provided that if such default cannot be remedied within such thirty-day period, it shall not constitute an Event of Default if corrective action is instituted by the Commonwealth within such period and diligently pursued until the default is remedied.

### **Application of Revenues and Other Moneys After Default**

During the continuance of an Event of Default, the Trustee shall apply the moneys, securities and funds held by the Trustee and such Pledged Funds and the income therefrom, to the fullest extent permitted by law, as follows and in the following order:

- (i) to the payment of the reasonable and proper charges and expenses of the Fiduciaries and of any counsel selected by a Fiduciary;
- (ii) to the payment of the interest and principal amount or Redemption Price then due on the Senior Notes, as follows:
  - (a) unless the principal amount of all of the Senior Notes shall have become due and payable, First: To the payment to the persons entitled thereto of all installments of interest then due in the order in which such installments came due, and, if the amount available shall not be sufficient to pay in full all installments that came due at the same time, then to the payment thereof ratably, according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference; and Second: To the payment to the persons entitled thereto of the unpaid principal amount or Redemption Price of any Senior Notes which shall become due, whether at maturity or by call for redemption, in the order of their due dates, and, if the amount available shall not be sufficient to pay in full all the Senior Notes due on any date, then to the payment thereof ratably, according to the amounts of principal or Redemption Price due on such date, to the persons entitled thereto, without any discrimination or preference; and
  - (b) if the principal of all of the Senior Notes shall have become due and payable, to the payment of the principal amount and interest then due and unpaid upon the Senior Notes without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Senior Note over any other Senior Note, ratably, according to the amounts due respectively for principal amount and interest, to the persons entitled thereto, without any discrimination or preference; and
- (iii) to the payment of any person entitled to the payment of any Note Related Cost ratably in accordance with the amount of such Note Related Costs,

provided that any payment by the Trustee of Alternative Revenues shall not exceed the Appropriated Amount for such purpose during the then current Commonwealth Fiscal Year, unless the State Treasurer shall certify to the Trustee that payment of such amount shall not then be subject to appropriation.

#### **Proceedings Brought by Trustee**

If an Event of Default shall happen and shall not have been remedied, then and in every such case, the Trustee may proceed to protect and enforce its rights and the rights of the registered owners of the Senior Notes under the Trust Agreement by a suit or suits in equity or at law. The registered owners of a majority in principal amount of the Senior Notes Outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, provided that the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall determine that the action or proceeding so directed would involve the Trustee in personal liability or be unjustly prejudicial to the Noteholders not parties to such direction.

Regardless of the happening of an Event of Default, the Trustee shall have power to, but unless requested in writing by the registered owners of a majority in principal amount of the Senior Notes then Outstanding and furnished with reasonable security and indemnity, shall be under no obligation to, institute and maintain such suits and proceedings as it may deem necessary or expedient to prevent any impairment of the security under the Trust Agreement by any acts which may be unlawful or in violation of the Trust Agreement, or necessary or expedient to preserve or protect its interests and the interests of the Noteholders.

Nothing contained in the Trust Agreement is intended to preclude the Trustee upon the occurrence of an Event of Default from asserting any and all remedies it may have at law or equity with respect to the Pledged Funds and other amounts held as security under the Trust Agreement, including asserting any rights it may have as Trustee under the Trust Agreement as a secured party with respect to all security granted thereunder notwithstanding any requirements contained in the Trust Agreement with respect to Appropriated Amounts.

#### **Restrictions on Noteholders' Action**

No registered owner of any Senior Note shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any provision of the Trust Agreement or for any remedy under the Trust Agreement, unless such registered owner shall have previously given to the Trustee written notice of the happening of any Event of Default and the registered owners of at least twenty-five percent (25%) in principal amount of Senior Notes then Outstanding shall have filed a written request with the Trustee, and shall have offered it reasonable opportunity, to exercise the powers granted in the Trust Agreement in its own name, and unless such registered owners shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred thereby, and the Trustee shall have refused to comply with such request within a reasonable time.

#### **No Right of Acceleration**

Neither the Noteholders nor the Trustee shall have any right to accelerate the payment of principal or interest due on any Senior Notes Outstanding upon the occurrence of any Event of Default.

#### **Responsibility of Fiduciaries**

The duties and obligations of the Fiduciaries shall be determined by the express provisions of the Trust Agreement and the Fiduciaries shall not be liable except for their performance of such duties and obligations as are specifically set forth in the Trust Agreement. No Fiduciary shall be under any responsibility or duty with respect to the issuance of the Senior Notes for value or the application of the proceeds thereof or the application of any moneys paid to the Commonwealth or any other Fiduciary. No Fiduciary shall be under any obligation or duty to perform any act which would involve it in expense or liability or to institute or defend any suit in respect thereof, or to advance any of its own moneys, unless properly indemnified. No Fiduciary shall be liable in connection with the performance of its duties under the Trust Agreement except for its own negligence or bad faith nor shall any Fiduciary be liable for any action taken or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by the Trust Agreement.

## **Compensation**

The Commonwealth shall pay to each Fiduciary from time to time reasonable compensation for all services rendered under the Trust Agreement, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys, agents, and employees incurred in and about the performance of their powers and duties under the Trust Agreement. To the extent permitted by law, the Commonwealth shall indemnify and save each Fiduciary harmless against any liabilities which it may incur in the exercise and performance of its powers and duties under the Trust Agreement, and which are not due to its negligence or bad faith.

## **Resignation of Trustee**

The Trustee may at any time resign and be discharged of the duties and obligations created by the Trust Agreement by giving not less than sixty (60) days' written notice to the State Treasurer and giving not less than thirty (30) days' written notice to each Noteholder and Paying Agent specifying the date when such resignation shall take effect, and such resignation shall take effect upon the day specified in such notice provided a successor shall have been appointed, unless previously a successor shall have been appointed by the State Treasurer or the Noteholders, in which event such resignation shall take effect immediately on the appointment of such successor.

## **Removal of Trustee**

The Trustee may be removed at any time by an instrument or concurrent instruments in writing, filed with the Trustee, and signed by the registered owners of a majority in principal amount of the Senior Notes then outstanding or their attorneys-in-fact duly authorized, excluding any Senior Notes held by or for the account of the Commonwealth. Except during the existence of an Event of Default, the State Treasurer may remove the Trustee at any time for cause or upon not less than ninety (90) days' prior written notice to the Trustee for such other reason as shall be determined in the sole discretion of the State Treasurer.

## **Appointment of Successor Trustee**

In case at any time the Trustee shall resign or shall be removed or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver, liquidator or conservator of the Trustee, or of its property, shall be appointed, or if any public officer shall take charge or control of the Trustee, or of its property or affairs, a successor may be appointed by the registered owners of a majority in principal amount of the Senior Notes then Outstanding, excluding any Senior Notes held by or on account of the Commonwealth, by an instrument or concurrent instruments in writing signed and acknowledged by such Noteholders or by their attorneys-in-fact duly authorized and delivered to such successor Trustee; notification thereof being given to the State Treasurer and the predecessor Trustee. Pending such appointment, the State Treasurer by a written instrument signed by an Authorized Officer and delivered to the predecessor Trustee shall forthwith appoint a Trustee to fill such vacancy until a successor Trustee shall be appointed by the Noteholders. Any Trustee appointed in succession to the Trustee shall be a bank or trust company organized under the laws of any state, or a national banking association, having a capital and surplus aggregating at least fifty million dollars (\$50,000,000), if there be such a bank or trust company or national banking association willing and able to accept the office on reasonable and customary terms and authorized by law to perform all duties imposed upon it by the Trust Agreement.

## **Supplemental Trust Agreement Effective Upon Filing**

The State Treasurer, with the written concurrence of the Secretaries, and the Trustee may at any time and from time to time enter into supplements or amendments to the Trust Agreement for any one or more of the following purposes:

- (i) to cure any ambiguity, inconsistency or formal defect or omission in the Trust Agreement;
- (ii) to close the Trust Agreement against, or provide limitations and restrictions contained in the Trust Agreement on, the original issuance of Senior Notes;

- (iii) to add to the covenants and agreements of the Commonwealth contained in the Trust Agreement other covenants and agreements thereafter to be observed for the purpose of further securing the Senior Notes;
- (iv) to surrender any right, power or privilege reserved to or conferred upon the Commonwealth by the Trust Agreement;
- (v) to authorize Senior Notes of a Series and, in connection therewith, specify and determine any matters and things relative to such Senior Notes not contrary to or inconsistent with the Trust Agreement;
- (vi) to authorize any Credit Enhancement, Liquidity Facility or Reserve Credit Facility;
- (vii) to exercise any provision in the Trust Agreement or to make such determinations under the Trust Agreement as expressly provided therein to be exercised or determined in a Supplemental Trust Agreement;
- (viii) to confirm, as further assurance, any pledge under and the subjection to any lien or pledge created or to be created by the Trust Agreement of the Pledged Funds;
- (ix) in connection with any change in the Commonwealth Fiscal Year or Federal Fiscal Year, to amend or supplement the appropriate provisions of the Trust Agreement to reflect such change in a manner consistent, as nearly as practicable, with the original provisions of the Trust Agreement, as amended to the date of the Supplemental Trust Agreement implementing the amendment or supplement; and
- (x) for any other purpose, provided that such Supplemental Trust Agreement does not prejudice in any material respect the right of the registered owner of any Senior Note Outstanding at the date such Supplemental Trust Agreement becomes effective.

### **Powers of Amendment**

Any modification or amendment of the Senior Notes or of the Trust Agreement may be made by a Supplemental Trust Agreement, with the written consent (i) of the registered owners of at least a majority in the principal amount of all Senior Notes Outstanding at the time such consent is given, or (ii) in case less than all of the several Series of Senior Notes then Outstanding are affected by the modification or amendment, of the registered owners of at least a majority in principal amount of the Senior Notes of each Series so affected and Outstanding at the time such consent is given, and (iii) in case the modification or amendment changes the amount or date of any Sinking Fund Payment, of the registered owners of the Senior Notes of the particular Series and maturity entitled to such Sinking Fund Payment Outstanding at the time such consent is given; provided, however, that, if such modification or amendment will, by its terms, not take effect so long as any Senior Notes of any specified like Series and maturity remain Outstanding, the vote or consent of the registered owners of such Senior Notes shall not be required and such Senior Notes shall not be deemed to be Outstanding for the purpose of any calculation of outstanding Senior Notes under this Section; and provided, further, that no such modification or amendment shall permit a change in the terms of redemption or maturity of the principal amount of any Outstanding Senior Note or of any installment of interest thereon or a reduction in the principal amount or the Redemption Price thereof or the rate of interest thereon or the method for determining such rate or terms of any Credit Enhancement or Liquidity Facility relating to a Senior Note without the consent of the registered owner of such Senior Note, or shall change or modify any of the rights or obligations of any Fiduciary without its written assent thereto, or shall reduce the percentages of the principal amount of Senior Notes the consent of which is required to effect any such modification or amendment.

### **Defeasance**

If the Commonwealth shall pay or cause to be paid, or there shall otherwise be paid, to the registered owners of the Senior Notes then Outstanding, the principal amount and interest and Redemption Price, if any, to

become due thereon, at the times and in the manner stipulated therein and in the Trust Agreement and if no Note Related Costs then due and payable remain unpaid or payment of any such Costs has been provided for, then the pledge of the Pledged Funds and any other moneys and securities pledged by the Trust Agreement and all other rights granted by the Trust Agreement shall be discharged and satisfied. In such event, the Trustee shall, upon request of the Commonwealth, execute and deliver to the Commonwealth all such instruments as may be desirable to evidence such release and discharge and the Fiduciaries shall pay over or deliver to the Commonwealth all moneys or securities held by them pursuant to the Trust Agreement which are not required for the payment or redemption of Senior Notes not theretofore surrendered for such payment or redemption or for the payment of any Note Related Costs or for deposit to any Rebate Account with respect to any Series of Tax Exempt Notes.

Senior Notes or interest installments for the payment or redemption of which moneys shall be held by the Fiduciaries (through deposit by the Commonwealth of funds for such payment or redemption or otherwise), whether at or prior to the maturity or the redemption date of such Senior Notes, shall be deemed to have been paid within the meaning and with the effect expressed in the Trust Agreement. All Outstanding Senior Notes of any Series or any part of a Series shall prior to the maturity or redemption date thereof be deemed to have been paid within the meaning and with the effect expressed in the Trust Agreement if (i) in case any of said Senior Notes are to be redeemed on any date prior to their maturity, an Authorized Officer shall have given to the Trustee, in form satisfactory to it, irrevocable instructions to provide notice of redemption on said date of such Senior Notes, (ii) there shall have been deposited with the Trustee in the Defeasance Account either moneys in an amount which shall be sufficient, or Defeasance Obligations not subject to redemption or otherwise called for redemption for which amounts have been placed in escrow, in each case the principal of and interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Trustee at the time of deposit of such Defeasance Obligations, shall be sufficient, as certified by a firm of independent public accountants, to pay when due the principal amount or Redemption Price, if applicable, and interest due and to become due on said Senior Notes on and prior to the redemption date or maturity date thereof, as the case may be. Any cash received from the principal or interest payments on such Defeasance Obligations deposited with the Trustees if not then needed for such purpose, may, to the extent practicable be reinvested in Defeasance Obligations or, in lieu of such direction at the time of receipt, an Authorized Officer may authorize and direct the Trustee to enter into one or more forward purchase agreements providing for the purchase of Defeasance Obligations at future dates as provided in the Trust Agreement.

For purposes of determining whether Variable Rate Notes shall be deemed to have been paid prior to the maturity or redemption date thereof, as the case may be, by the deposit of moneys, or Defeasance Obligations and moneys, if any, the interest to come due on such Variable Rate Notes on or prior to the maturity date or redemption date thereof, as the case may be, shall be calculated at the Variable Rate Ceiling if in effect with respect to such Senior Notes.

Tender Notes shall be deemed to have been paid only if, in addition to satisfying the requirements thereof, there shall have been deposited with the Trustee moneys in an amount which shall be sufficient to pay when due the maximum amount of principal of and premium, if any, and interest on such Senior Notes which could become payable to the registered owners of such Senior Notes upon the exercise of any options provided to the registered owners of such Senior Notes; provided, however, that if, at the time a deposit is made with the Trustee pursuant to the provisions described above, the options originally exercisable by the registered owner of Tender Notes are no longer exercisable, such Senior Notes shall not be considered Tender Notes.

### **Unclaimed Funds**

Any moneys held by the Fiduciary in trust for the payment and discharge of any Senior Notes which remain unclaimed for the applicable escheat period after the date when such Senior Notes have become due and payable, either at their stated maturity dates or by call for earlier redemption, if such moneys were held by the Fiduciary at such date, or for the applicable escheat period after the date of deposit of such moneys if deposited with the Fiduciary after the said date when such Senior Notes become due and payable, shall be paid to the Commonwealth as its absolute property and free from trust, and the Fiduciary shall thereupon be released and discharged with respect thereto and the Noteholders shall look only to the Commonwealth for the payment of such Senior Notes.



**No Recourse on the Senior Notes**

No recourse shall be had for the payment of the principal or Redemption Price of or the interest on the Senior Notes or for any claim based thereon or on the Trust Agreement against any official, agent, representative or employee of the Commonwealth or any person executing the Senior Notes. No official, agent, representative or employee of the Commonwealth shall be held personally liable to any purchaser or holder of any Senior Note under or upon such Senior Note, or under or upon the Trust Agreement or any Supplemental Trust Agreement relating to Senior Notes, or, to the extent permitted by law, because of the sale or issuance or attempted sale or issuance of Senior Notes, or because of any act or omission in connection with the investment or management of the Pledged Funds, funds or moneys of the Commonwealth, or otherwise in connection with the management of its affairs, excepting solely for things willfully done or omitted to be done with an intent to defraud.

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**APPENDIX C**

**TABLE OF REFUNDED NOTES**

The Notes of the Commonwealth to be refunded with the proceeds of the Senior Notes are described below.

Federal Highway Grant Anticipation Notes, 1998 Series A:

<u>Maturity Date</u>	<u>Amount</u>	<u>Coupon</u>	<u>Maturity or Redemption Date</u>	<u>Redemption Price</u>	<u>CUSIP Number*</u>
12/15/2012	\$35,350,000	5.250%	12/15/2012	100%	57583PAR0
6/15/2013	20,000,000	5.500	6/15/2013	100	57583PAT6
12/15/2013	34,740,000	5.500	12/15/2013	100	57583PAU3
12/15/2014	36,680,000	0.000	12/15/2014	100	57583PAW9
6/15/2015	36,680,000	0.000	6/15/2015	100	57583PAX7

Federal Highway Grant Anticipation Notes, 1998 Series B:

<u>Maturity Date</u>	<u>Amount</u>	<u>Coupon</u>	<u>Maturity or Redemption Date</u>	<u>Redemption Price</u>	<u>CUSIP Number*</u>
6/15/2011	\$ 8,605,000	5.125%	2/1/2011	100%	57583PBP3
6/15/2011	5,000,000	4.600	2/1/2011	100	57583PBY4
12/15/2011	15,030,000	5.125	2/1/2011	100	57583PBQ1
6/15/2012	16,555,000	0.000	6/15/2012	100	57583PBZ1
12/15/2012	15,480,000	5.125	2/1/2011	100	57583PCA5
6/15/2013	13,325,000	5.125	2/1/2011	100	57583PBT5
6/15/2013	5,000,000	4.750	2/1/2011	100	57583PCB3
6/15/2014	10,000,000	4.800	2/1/2011	100	57583PCC1

Federal Highway Grant Anticipation Notes, 2000 Series A:

<u>Maturity Date</u>	<u>Amount</u>	<u>Coupon</u>	<u>Redemption Date</u>	<u>Redemption Price</u>	<u>CUSIP Number*</u>
6/15/2011	\$29,660,000	5.750%	2/1/2011	100%	57583PDB2
12/15/2011	29,510,000	5.750	2/1/2011	100	57583PDD8
12/15/2011	1,000,000	4.900	2/1/2011	100	57583PDC0
6/15/2012	31,380,000	5.750	2/1/2011	100	57583PDE6
12/15/2012	3,665,000	5.000	2/1/2011	100	57583PDF3
6/15/2013	33,200,000	5.750	2/1/2011	100	57583PDH9
12/15/2013	6,755,000	5.000	2/1/2011	100	57583PDJ5
6/15/2015	10,000,000	5.300	2/1/2011	100	57583PDN6

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\* Copyright, American Bankers Association. CUSIP data herein are provided by Standard & Poor's, CUSIP Service Bureau, a division of The McGraw Hill Companies, Inc. The CUSIP numbers listed above are being provided solely for the convenience of Noteholders only at the time of issuance of the Refunded Notes and the Commonwealth does not make any representation with respect to such numbers or undertake any responsibility for their accuracy now or at any time in the future. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Refunded Notes as a result of various subsequent actions including, but not limited to, a refunding in whole or in part of such maturity or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of certain maturities of the Refunded Notes.

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PROPOSED FORM OF OPINION OF BOND COUNSEL

December \_\_, 2010

The Honorable Timothy P. Cahill  
Treasurer and Receiver-General  
The Commonwealth of Massachusetts  
State House - Room 227  
Boston, Massachusetts 02133

\$380,530,000  
The Commonwealth of Massachusetts  
Special Obligation Refunding Notes  
(Senior Federal Highway Grant Anticipation Note Program), 2010 Series A

Ladies and Gentlemen:

We have acted as Bond Counsel to The Commonwealth of Massachusetts (the “Commonwealth”) and, in that capacity, have examined a record of proceedings relating to the issuance by the Commonwealth of \$380,530,000 aggregate principal amount of its Special Obligation Refunding Notes (Senior Federal Highway Grant Anticipation Note Program), 2010 Series A, dated December \_\_, 2010 (the “2010 Series A Notes”).

The 2010 Series A Notes are being issued pursuant to Section 53A of Chapter 29 of the Massachusetts General Laws and under and pursuant to an Amended and Restated Trust Agreement, dated as of December 1, 2010 (the “Amended and Restated Trust Agreement”), as supplemented by a Fifth Supplemental Trust Agreement, dated as of December 1, 2010 (the “Fifth Supplemental Trust Agreement” and, together with the Amended and Restated Trust Agreement, the “Trust Agreement”), each by and between the Commonwealth and U.S. Bank National Association, as the successor trustee (the “Trustee”). The Amended and Restated Trust Agreement has been entered into pursuant to Sections 9 through 10D of Chapter 11 of the Acts of 1997, as amended by Chapter 121 of the Acts of 1998, as further amended by Chapter 235 of the Acts of 1998 (collectively, the “Act”). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Trust Agreement.

The Internal Revenue Code of 1986 (the “Code”) sets forth certain requirements which must be met subsequent to the issuance and delivery of the 2010 Series A Notes for interest thereon to be and remain excluded from gross income for Federal income tax purposes. Noncompliance with such requirements could cause the interest on the 2010 Series A Notes to be included in gross income for Federal income tax purposes retroactive to the date of issue of the 2010 Series A Notes. Pursuant to the Trust Agreement and the Tax Certificate as to Arbitrage and the Provisions of Sections 103 and 141-150 (the “Tax Certificate”), the Commonwealth has covenanted to comply with the applicable requirements of the Code in order to maintain the exclusion of the interest on the 2010 Series A Notes from gross income for Federal income tax purposes pursuant to Section 103 of the Code. In addition, the Commonwealth has made certain representations and certifications in the Trust Agreement and the Tax Certificate. We have not independently verified the accuracy of those certifications and representations.

In rendering the opinion in paragraph 5 hereof, we have relied upon and assumed the material accuracy of the representations, statements of intention and reasonable expectation and certifications of fact contained in the Tax Certificate with respect to matters affecting the exclusion from gross income for federal income tax purposes pursuant to Section 103 of the Code of interest on the 2010 Series A Notes and compliance by the Commonwealth with procedures and covenants set forth in the Tax Certificate as to such tax matters.

We have reviewed the Amended and Restated Trust Agreement, the Tax Certificate, the Act, Section 53A of Chapter 29 of the Massachusetts General Laws, certificates of the Commonwealth and others, and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein. We have also reviewed one of said 2010 Series A Notes as executed and, in our opinion, the form of said 2010 Series A Notes and their execution are regular and proper.

Based on and subject to the foregoing, we are of the opinion that:

1. The Commonwealth has the right and power under the Act to enter into the Amended and Restated Trust Agreement and the Fifth Supplemental Trust Agreement, and each of the Amended and Restated Trust Agreement and the Fifth Supplemental Trust Agreement has been duly authorized, executed and delivered on behalf of the Commonwealth by the Treasurer and Receiver-General of the Commonwealth with the concurrence of the Secretary of Administration and Finance of the Commonwealth and the Secretary of Transportation of the Commonwealth, is in full force and effect and constitutes the legal, valid and binding obligation of the Commonwealth enforceable in accordance with its terms.

2. The Trust Agreement creates a valid lien on the Pledged Funds for the security of the 2010 Series A Notes that it purports to create. The Act provides that such pledge shall be perfected by filing the Trust Agreement in the records of the Treasurer and Receiver-General of the Commonwealth; the Trust Agreement has been so filed and the lien of such pledge shall be valid and binding as against all persons or entities of any kind having claims of any kind in tort, contract or otherwise, irrespective of whether such persons or entities have notice thereof.

3. The 2010 Series A Notes have been duly authorized, executed and delivered and are valid and binding special obligations of the Commonwealth payable solely from the Pledged Funds. The 2010 Series A Notes are not general obligations of the Commonwealth and the full faith and credit of the Commonwealth are not pledged to the payment thereof. The Commonwealth is not obligated to make any payments with respect to the 2010 Series A Notes, except as specified therein and in the Amended and Restated Trust Agreement; and the Commonwealth is not obligated to impose any taxes to satisfy the obligations thereunder.

4. Under the Act and the Trust Agreement, the deposit of Pledged Revenues to and expenditure of Pledged Revenues (and investment earnings thereon) from the Federal Highway Grant Anticipation Note Trust Fund to pay the principal of and premium (if any) and interest on 2010 Series A Notes issued under the Trust Agreement, as provided in the Act and the Trust Agreement, is not subject to legislative appropriation by the Commonwealth. The deposit of Alternative Revenues with the Trustee to be held under the Trust Agreement is not subject to appropriation, but the expenditure of Alternative Revenues (and investment earnings thereon) to pay the principal of and premium (if any) and interest on 2010 Series A Notes is subject to legislative appropriation by the Commonwealth. Pursuant to the provisions of the Act, the Trust Agreement provides that, under certain circumstances specified therein, all Alternative Revenues (and investment earnings thereon) shall be held on deposit with the Trustee, subject to the lien of the Trust Agreement, until such time as a legislative appropriation shall be in effect to pay the principal of and premium (if any) and interest on 2010 Series A Notes due in the then current fiscal year.

5. Under existing law, assuming compliance with the tax covenants described herein and the accuracy of the aforementioned representations and certifications, interest on the 2010 Series A Notes is excluded from gross income for Federal income tax purposes under Section 103 of the Code. We are also of the opinion that such interest on the 2010 Series A Notes is not treated as a preference item in calculating the alternative minimum tax imposed under the Code with respect to individuals and corporations. Interest on the 2010 Series A Notes is, however, included in the adjusted current earnings of certain corporations for purposes of computing the alternative minimum tax imposed on such corporations.

6. Under existing law, interest on the 2010 Series A Notes is exempt from Massachusetts personal income taxes and the 2010 Series A Notes are exempt from Massachusetts personal property taxes. We express no opinion regarding any other Massachusetts tax consequences arising with respect to

the 2010 Series A Notes or any tax consequences arising with respect to the 2010 Series A Notes under the laws of any state other than Massachusetts.

The opinions expressed in paragraphs 1 and 3 above are subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws heretofore or hereafter enacted affecting creditors' rights and are subject to the application of principles of equity relating to or affecting the enforcement of contractual obligations, whether such enforcement is considered in a proceeding in equity or at law.

Except as stated in paragraphs 5 and 6, we express no opinion as to any other Federal, state, local or foreign tax consequences of the ownership or disposition of the 2010 Series A Notes. Furthermore, we express no opinion as to any Federal, state, local or foreign tax law consequences with respect to the 2010 Series A Notes, or the interest thereon, if any action is taken with respect to the 2010 Series A Notes or the proceeds thereof upon the advice or approval of other counsel.

This opinion is rendered solely with regard to the matters expressly opined on above and does not consider or extend to any documents, agreements, representations or other material of any kind not specifically opined on above. No other opinions are intended nor should they be inferred. This opinion is issued under existing laws as of the date hereof, and we assume no obligation to update, revise or supplement this opinion to reflect any future actions, facts or circumstances that may hereafter come to our attention, or any changes in law, or in interpretations thereof, that may hereafter occur, or for any reason whatsoever.

Very truly yours,

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**APPENDIX E**

Commonwealth of Massachusetts

Special Obligation Refunding Notes  
(Senior Federal Highway Grant Anticipation Note Program)  
2010 Series A

Continuing Disclosure Undertaking

On behalf of the Commonwealth, the Treasurer and Receiver-General of the Commonwealth hereby undertakes for the benefit of the owners of the Special Obligation Refunding Notes (Senior Federal Highway Grant Anticipation Note Program), 2010 Series A (the “Senior Notes”) to provide the Municipal Securities Rulemaking Board (the “MSRB”) through its Electronic Municipal Market Access (“EMMA”) system pursuant to the requirements of Rule 15c2-12 of the Securities and Exchange Commission (the “Rule”), no later than 270 days after the end of each fiscal year of the Commonwealth, (i) the annual financial information described below relating to such fiscal year, together with audited financial statements of the Commonwealth for such fiscal year if audited financial statements are then available, provided, however, that if audited financial statements of the Commonwealth are not then available, such audited financial statements shall be delivered to EMMA when they become available (but in no event later than 350 days after the end of such fiscal year) or (ii) notice of the Commonwealth’s failure, if any, to provide any such information. The annual financial information to be provided as aforesaid shall include financial information and operating data, in each case updated through the last day of such fiscal year unless otherwise noted, relating to the following information contained in the Commonwealth’s Official Statement dated December 14, 2010 (the “Official Statement”) relating to the Senior Notes, and in each case substantially in the same level of detail as is found in the referenced section of the Official Statement:

Financial Information and Operating Data Category	Reference to Official Statement for Level of Detail
1. Advance Construction Balance as of end of prior Commonwealth Fiscal Year	SECURITY AND SOURCES OF PAYMENT FOR THE SENIOR NOTES UNDER THE TRUST AGREEMENT – Advance Construction Balance Covenant
2. Summary presentation of actual Gasoline Tax receipts on a ten-year comparative basis, concluding with the prior Commonwealth Fiscal Year	THE ALTERNATIVE REVENUES
3. Summary presentation of Obligation Authority made available to the Commonwealth and the amount of Obligation Authority actually obligation by the Commonwealth on a ten-year comparative basis, concluding with the prior Federal Fiscal Year.	COMMONWEALTH PARTICIPATION IN THE FEDERAL-AID HIGHWAY PROGRAM – Funding History
4. Summary presentation of apportionments received by the Commonwealth on a six-year comparative basis, concluding with the prior Federal Fiscal Year.	COMMONWEALTH PARTICIPATION IN THE FEDERAL-AID HIGHWAY PROGRAM – Funding History

Any or all of the items listed above may be included by reference to other documents, including official statements pertaining to debt issued by the Commonwealth, which have been submitted to the MSRB. The Commonwealth’s annual financial statements for each fiscal year shall consist of (i) combined financial statements prepared in accordance with a basis of accounting that demonstrates compliance with the Massachusetts General Laws and

other applicable state finance laws, if any, in effect from time to time including separately stated information with respect to the Federal Highway Grant Anticipation Note Trust Fund and (ii) general purpose financial statements prepared in accordance with generally accepted accounting principles in effect from time to time. Such financial statements shall be audited by a firm of certified public accountants appointed by the Commonwealth.

On behalf of the Commonwealth, the Treasurer and Receiver-General of the Commonwealth hereby further undertakes for the benefit of the owners of the Senior Notes to provide in a timely manner to the MSRB notice of any of the following events with respect to the Senior Notes:

- (i) principal and interest payment delinquencies;
- (ii) non-payment related defaults, if material;
- (iii) unscheduled draws on the debt service reserves reflecting financial difficulties;
- (iv) unscheduled draws on the credit enhancements reflecting financial difficulties;
- (v) substitution of the credit or liquidity providers or their failure to perform;
- (vi) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determination of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Senior Notes, or other material events affecting the tax status of the Senior Notes;
- (vii) modifications to rights of Noteholders, if material;
- (viii) optional, contingent or unscheduled calls of Senior Notes, if material;
- (ix) defeasances;
- (x) release, substitution or sale of property securing repayment of the Senior Notes, if material;
- (xi) rating changes;
- (xii) bankruptcy, insolvency, receivership or similar event of the Commonwealth\*;
- (xiii) the consummation of a merger, consolidation, or acquisition involving the Commonwealth or the sale of all or substantially all of the assets of the Commonwealth, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (xiv) appointment of a successor or additional trustee or the change of name of a trustee, if material;

Whenever the Commonwealth obtains knowledge of the occurrence of an event described in clauses (ii), (vi), (vii), (viii), (x), (xiii) or (xiv), the Commonwealth shall as soon as possible determine if such event is material under applicable federal securities laws.

Upon the occurrence of an event described in clauses (i), (iii), (iv), (v), (vi), (ix), (xi) or (xii), and in the event the Commonwealth determines that the occurrence of an event described in clauses (ii), (vi), (vii), (viii), (x), (xiii) or (xiv) is material under applicable federal securities laws, the Commonwealth shall, in a timely manner not in excess of ten (10) business days after the occurrence of the event, file a notice of such occurrence with the MSRB.

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\* As noted in the Rule, this event is considered to occur when any of the following occur: (i) the appointment of a receiver, fiscal agent or similar officer for the Commonwealth in a proceeding under the U.S. Bankruptcy Code or in any proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Commonwealth, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or (ii) the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Commonwealth.

Nothing herein shall preclude the Commonwealth from disseminating any information in addition to that required hereunder. If the Commonwealth disseminates any such additional information, nothing herein shall obligate the Commonwealth to update such information or include it in any future materials disseminated.

To the extent permitted by law, the foregoing provisions of this Senior Note related to the above-described undertakings to provide information shall be enforceable against the Commonwealth in accordance with the terms thereof by any owner of a Senior Note, including any beneficial owner acting as a third-party beneficiary (upon proof of its status as a beneficial owner reasonably satisfactory to the Treasurer and Receiver-General). To the extent permitted by law, any such owner shall have the right, for the equal benefit and protection of all owners of Senior Notes, by mandamus or other suit or proceeding at law or in equity, to enforce its rights against the Commonwealth and to compel the Commonwealth and any of its officers, agents or employees to perform and carry out their duties under the foregoing provisions as aforesaid. The failure to comply with the above-described undertakings shall not constitute an Event of Default under the Trust Agreement, and the sole remedy in connection with such undertakings shall be limited to an action to compel specific performance of the obligations of the Commonwealth in connection with such undertakings and shall not include any rights to monetary damages. The Commonwealth's obligations in respect of such undertaking shall terminate if no Senior Notes remain Outstanding or if the provisions of the Rule concerning continuing disclosure are no longer effective, whichever occurs first. The provisions of this Senior Note relating to such undertakings may be amended by the Treasurer and Receiver-General of the Commonwealth, without the consent of, or notice to, any owners of the Senior Notes, (a) to comply with or conform to the provisions of the Rule or any amendments thereto or authoritative interpretations thereof by the Securities and Exchange Commission or its staff (whether required or optional), (b) to add a dissemination agent for the information required to be provided by such undertakings and to make any necessary or desirable provisions with respect thereto, (c) to add to the covenants of the Commonwealth for the benefit of the owners of Senior Notes, (d) to modify the contents, presentation and format of the annual financial information from time to time as a result of a change in circumstances that arises from a change in legal requirements, or (e) to otherwise modify the undertakings in a manner consistent with the provisions of state legislation establishing the SID or otherwise responding to the requirements of the Rule concerning continuing disclosure; provided, however, that in the case of any amendment pursuant to clause (d) or (e), (i) the undertaking, as amended, would have complied with the requirements of the Rule at the time of the offering of the Senior Notes, after taking into account any amendments or authoritative interpretations of the Rule, as well as any changes in circumstances, and (ii) the amendment does not materially impair the interests of the owners of the Senior Notes, as determined either by a party unaffiliated with the Commonwealth (such as Commonwealth disclosure counsel or Commonwealth bond counsel) or by the vote or consent of owners of a majority in outstanding principal amount of the Senior Notes affected thereby at or prior to the time of such amendment.

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