

*In the opinion of Edwards Wildman Palmer LLP, Bond Counsel, based upon an analysis of existing law and assuming, among other matters, compliance with certain covenants, interest on the 2012 Bonds is excluded from gross income for federal income tax purposes under the Internal Revenue Code of 1986. Interest on the 2012 Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although such interest is included in adjusted current earnings when calculating corporate alternative minimum taxable income. Under existing law, interest on the 2012 Bonds is exempt from State of New Hampshire personal income tax on interest and dividends. Bond Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the accrual or receipt of interest on, the 2012 Bonds. See Tax Exemption herein.*

**\$98,250,000**  
**STATE OF NEW HAMPSHIRE**  
**FEDERAL HIGHWAY GRANT ANTICIPATION BONDS**  
**2012 SERIES**

Dated: Date of Delivery

Due: September 1, as shown on inside cover

The above-captioned bonds (the "2012 Bonds") will be issued as fully registered bonds, and, when issued, will be registered in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York ("DTC"), an automated depository for securities and a clearinghouse for securities transactions. Purchases of beneficial interests in the 2012 Bonds will be made in book-entry form (without certificates) in the denomination of \$5,000 or any integral multiple thereof. So long as DTC, or its nominee, Cede & Co., is the registered owner of the 2012 Bonds, payments of the principal of, premium, if any, and interest on the 2012 Bonds will be made directly to Cede & Co., which will remit such payments to DTC participants, which in return will remit such payments to the beneficial owners of the 2012 Bonds. See *Book-Entry Bonds*. Interest on the 2012 Bonds is payable from the date of delivery, on March 1 and September 1 of each year, commencing on September 1, 2012.

The 2012 Bonds are not subject to redemption prior to maturity.

The 2012 Bonds are being issued to provide funds sufficient, together with other available funds, to finance a portion of the costs of the I-93 Project (as defined herein) and to pay certain costs of issuance. The 2012 Bonds are being issued under, and secured by, a Trust Agreement dated as of October 20, 2010 (as amended and supplemented from time to time, the "Trust Agreement"), as supplemented by a Second Supplemental Trust Agreement dated as of May 1, 2012 (the "Second Supplemental Agreement"), each between the State of New Hampshire (the "State") and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"). The 2012 Bonds are the second series issued under the Trust Agreement and will be secured on a parity with bonds previously issued in 2010 as described herein (the "2010 Bonds") and any additional parity obligations issued by the State under the Trust Agreement ("Additional Bonds" and, collectively with the 2010 Bonds and the 2012 Bonds, the "Bonds"), as described herein.

The State, acting by and through the New Hampshire Department of Transportation (the "Department") and the State Treasurer, has entered into a memorandum of agreement (the "2012 Memorandum of Agreement") with the Federal Highway Administration ("FHWA") that provides for the reimbursement to the State by FHWA for debt service and costs incurred for the 2012 Bonds, including principal, interest and other bond related costs, as provided in Title 23, Section 122, United States Code, and as further described herein. The 2012 Memorandum of Agreement is a Federal Aid Agreement under the Trust Agreement.

The Bonds are special limited obligations of the State payable from and secured solely by a pledge of Pledged Funds, as defined in the Trust Agreement, all rights to receive Pledged Funds, and all Funds and Accounts, other than the Rebate Fund, held under the Trust Agreement. **The Bonds are not general obligations of the State and are not secured by the full faith and credit of the State. The Bonds are payable only from Pledged Funds available under the Trust Agreement.**

The Bonds are offered when, as and if issued and received by the Underwriters and subject to the unqualified approving opinion as to legality of Edwards Wildman Palmer LLP, Boston, Massachusetts, Bond Counsel. Certain legal matters will be passed upon for the Underwriters by their counsel, Preti, Flaherty, Beliveau & Pachios, LLP, Concord, New Hampshire. The 2012 Bonds are expected to be available for delivery at DTC in New York, New York, or its custodial agent, on or about May 30, 2012.

**BofA Merrill Lynch****Citigroup****J.P. Morgan****Barclays Capital****Fidelity Capital Markets**

**\$98,250,000**  
**STATE OF NEW HAMPSHIRE**  
**FEDERAL HIGHWAY GRANT ANTICIPATION BONDS**  
**2012 SERIES**

<u>Due</u> <u>September 1</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>CUSIP*</u> <u>64469N</u>
2013	\$11,065,000	2.00%	0.25%	AH2
2014	5,605,000	4.00	0.46	AJ8
2014	5,685,000	5.00	0.46	AR0
2015	11,800,000	5.00	0.65	AK5
2016	1,270,000	3.00	0.79	AL3
2016	11,120,000	5.00	0.79	AS8
2017	1,030,000	4.00	1.02	AM1
2017	11,955,000	5.00	1.02	AT6
2018	13,620,000	5.00	1.24	AN9
2019	940,000	3.00	1.45	AP4
2019	13,360,000	5.00	1.45	AU3
2020	10,800,000	5.00	1.68	AQ2

**Statement pursuant to New Hampshire Revised Statutes Annotated 421-B:20:**

**In making an investment decision investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved. These securities have not been recommended by any federal or state securities commission or regulatory authority. Furthermore, the foregoing authorities have not confirmed the accuracy or determined the adequacy of this document. Any representation to the contrary is a criminal offense.**

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\* CUSIP is a registered trademark of the American Bankers Association. CUSIP data herein is provided by CUSIP Global Services, managed by Standard & Poor's Financial Services LLC on behalf of The American Bankers Association. The CUSIP numbers are included solely for the convenience of Bondholders and the State is not responsible for the selection or the correctness of the CUSIP numbers printed herein. CUSIP numbers assigned to securities may be changed during the term of such securities based on a number of factors, including, but not limited to, the refunding or defeasance of such securities or the use of secondary market financial products.

No dealer, broker, salesperson or other person has been authorized by the State or the Underwriters 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 representation must not be relied upon as having been authorized by the State or the Underwriters. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the 2012 Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale.

If and when included in this Official Statement, the words “expects,” “forecasts,” “projects,” “intends,” “anticipates,” “estimates” and analogous expressions are intended to identify forward-looking statements as defined in the Securities Act of 1933, as amended, and any such statements inherently are subject to a variety of risks and uncertainties that could cause actual results to differ materially from those projected, if any. Such risks and uncertainties include, among others, general economic and business conditions, changes in fuel prices, changes in political, social and economic conditions, changes in the federal highway aid program, regulatory initiatives and compliance with governmental regulations, litigation and various other events, conditions and circumstances affecting the State, many of which are beyond its control. These forward-looking statements speak only as of the date of this Official Statement. The State disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statement contained herein to reflect any change in the State’s expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based.

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 any of the information set forth herein since the date hereof. Any statements made in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended merely as opinion and not as representations of fact.

**In connection with an offering of the 2012 Bonds the Underwriters may over allot or effect transactions which stabilize or maintain the market price of such bonds at a level above that which might otherwise prevail in the open market. Such stabilizing, if commenced, may be discontinued at any time.**

**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 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.**

TABLE OF CONTENTS

	Page		Page
INTRODUCTION .....	1	Rescissions .....	24
THE I-93 PROJECT .....	3	Special Federal Provisions Relating to Debt-Financed Projects .....	24
Background Information .....	3	STATE PARTICIPATION IN THE FEDERAL-AID HIGHWAY PROGRAM .....	25
Work Completed to Date .....	5	Funding History .....	25
Funding Plan .....	6	Federal Reimbursement Received by the State .....	26
PLAN OF FINANCE .....	6	Future Utilization of Pledged Federal Aid .....	27
Estimated Sources and Uses of Funds .....	6	PROGRAM RESPONSIBILITY AND MANAGEMENT .....	27
THE 2012 BONDS .....	7	The Act .....	27
Description of the 2012 Bonds .....	7	Department of Transportation .....	28
Registration and Exchange of 2012 Bonds .....	7	Ten-Year Plan .....	31
BOOK-ENTRY BONDS .....	7	INVESTMENT CONSIDERATIONS .....	31
General .....	7	Limited Obligations .....	31
Limitations .....	9	Factors Affecting Federal Highway Funds .....	31
ANNUAL DEBT SERVICE REQUIREMENTS .....	10	Default and Remedies .....	32
Direct Payments with respect to the 2010 Bonds .....	10	Forward-Looking Statements .....	33
SECURITY FOR THE BONDS .....	11	UNDERWRITING .....	33
Limited Obligations .....	11	TAX EXEMPTION .....	33
Pledged Funds .....	11	LITIGATION .....	35
Payments of Pledged Funds to the Trustee .....	13	RATINGS .....	35
Issuance of Additional Bonds .....	13	FINANCIAL ADVISOR .....	35
INFORMATION CONCERNING THE FUNDING OF FEDERAL-AID HIGHWAYS .....	13	LEGALITY FOR INVESTMENT .....	35
The Federal-Aid Highway Program (FAHP) .....	13	CONTINUING DISCLOSURE .....	35
Reauthorization and Proposed Legislation .....	15	LEGAL MATTERS .....	36
Federal Highway Trust Fund (HTF) .....	16	MISCELLANEOUS .....	36
Federal-Aid Highway Program Reauthorization .....	18	APPENDIX A - SUMMARY OF CERTAIN PROVISIONS OF THE TRUST AGREEMENT .....	A-1
SAFETEA-LU .....	19	APPENDIX B - FORM OF CONTINUING DISCLOSURE CERTIFICATE .....	B-1
Highway Funding Equity-Minimum Funding .....	19	APPENDIX C - PROPOSED FORM OF OPINION .....	C-1
Federal Funding Cycle .....	20		
Federal-Aid Funding Procedures .....	20		
Highway Program Implementation .....	22		
Reimbursement .....	23		
State Matching Requirements .....	23		
Lapsing of Authorization .....	23		

**OFFICIAL STATEMENT**  
**of**  
**THE STATE OF NEW HAMPSHIRE**

**\$98,250,000**

**FEDERAL HIGHWAY GRANT ANTICIPATION BONDS**  
**2012 SERIES**

**INTRODUCTION**

This Official Statement, including the cover page and the Appendices hereto, is being distributed by the State of New Hampshire (the "State") in order to furnish information in connection with the sale of \$98,250,000 aggregate principal amount of its Federal Highway Grant Anticipation Bonds, 2012 Series (the "2012 Bonds"). The 2012 Bonds, the 2010 Bonds (defined below) and any Additional Bonds issued under the Trust Agreement are referred to herein as the "Bonds."

The 2012 Bonds are authorized to be issued pursuant to Chapter 228-A of the New Hampshire Revised Statutes Annotated, as amended to date (the "Act"), a resolution (the "Resolution") of the State adopted by the Governor and Executive Council of the State ("Governor and Council") on April 18, 2012; and are issued pursuant to and secured by a Trust Agreement dated as of October 20, 2010 (as amended and supplemented from time to time, the "Trust Agreement"), as supplemented by a Second Supplemental Trust Agreement dated as of May 1, 2012 (the "Second Supplemental Agreement"), each between the State and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee").

The State has currently authorized an aggregate of \$240 million of debt to be issued under the Act, of which \$195 million relates to the I-93 Project (hereafter defined) and \$45 million relates to bridges in Portsmouth, New Hampshire. The State issued its Federal Highway Grant Anticipation Bonds, \$20,040,000 2010 Series A (Federally Taxable – Build America Bonds – Direct Payment) and \$59,960,000 2010 Series B (Federally Taxable – Recovery Zone Economic Development Bonds – Direct Payment) on November 18, 2010 (collectively, the "2010 Bonds") under the Act and the Trust Agreement, as supplemented by the First Supplemental Trust Agreement dated as of October 20, 2010 between the State and the Trustee. The 2012 Bonds are the second series of Bonds to be issued under the Act and the Trust Agreement.

The State legislature has reviewed the State's ten-year transportation plan (H.B. 1716), which is adopted by the General Court and signed into law by the Governor every two years. H.B. 1716, as amended, was passed by the New Hampshire Senate on April 18, 2012 and by the New Hampshire House on May 9, 2012. H.B. 1716, as amended, increases the aggregate Federal Highway Grant Anticipation Bond authorization by \$250 million which is equal to the estimated amount required to complete the currently unfunded remaining capacity improvements on the I-93 Project. The amendment provides, in part, that issuing of bonds shall be contingent upon the availability of sufficient anticipated federal aid over the term of the bonds. H.B. 1716 is currently on its way to the Governor for consideration. The State cannot now predict whether this legislation will become law. See *Program Responsibility and Management – Ten-Year Plan*.

The 2012 Bonds are being issued for the purpose of (i) funding a portion of the cost of constructing, improving, and expanding U.S. Interstate Highway 93 ("I-93") between Salem and Manchester, New Hampshire as part of a multi-year project authorized by the New Hampshire Legislature (as further described herein, the "I-93 Project") and (ii) paying the costs of issuance. See *Plan of Finance and Program Responsibility and Management*.

The Bonds are limited obligations of the State and, under the terms of the Trust Agreement, are payable solely from funds specifically available therefor. See *Security for the Bonds*.

The Bonds are not general obligations of the State or any political subdivision thereof and neither the full faith and credit nor the taxing power of the State or any political subdivision thereof is pledged for the payment of the Bonds. Additional Bonds ranking on a parity with or subordinate to the 2010 Bonds and 2012 Bonds have been

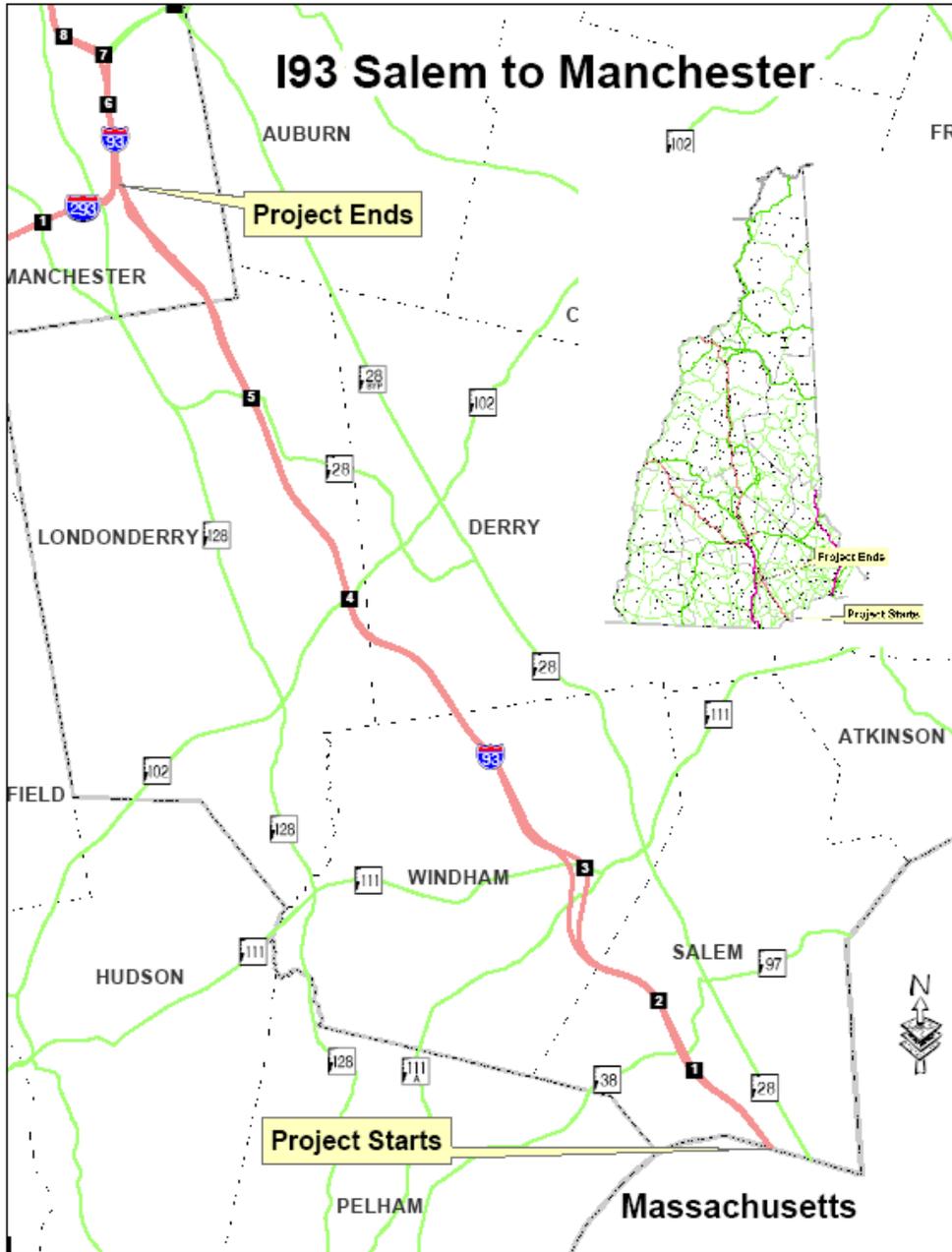
and may be issued from time to time under the Trust Agreement upon satisfaction of certain conditions set forth therein. See *Security for the Bonds – Issuance of Additional Bonds*.

Capitalized terms used herein and not otherwise defined have the meanings ascribed thereto in the Trust Agreement, and summary definitions of certain capitalized terms used herein are set forth in Appendix A hereto. Statements made herein with respect to the Act, the Trust Agreement and the 2012 Bonds are qualified in their entirety by a reference to such documents, copies of which are available upon request from the State Treasurer. See *Appendix A — Summary of Certain Provisions of the Trust Agreement*.

*[Remainder of page intentionally left blank.]*

## THE I-93 PROJECT

The State proposes to use 2012 Bond proceeds to fund construction contracts in two segments of the I-93 Project. Funds will be used primarily in the Towns of Salem and Windham, New Hampshire for reconstruction and widening of I-93 and for interchange reconstruction.



### Background Information

I-93 is a north-south principal arterial Interstate highway within the State and is part of the National System of Interstate and Defense Highways. I-93 in New Hampshire extends a distance of approximately 132 miles from the Massachusetts border at Salem, New Hampshire to the Vermont border at Littleton, New Hampshire. The I-93 Project is located within a 19.8 mile segment of I-93 from Salem to Manchester (the "Corridor") that intersects a number of the important highway routes in southern New Hampshire. Due to population growth, development, and

recreational opportunities in New Hampshire, the travel demands for the Corridor have exceeded the capacity of this existing four-lane facility for a number of years. Population and traffic projections for the next twenty years support the conclusion that the existing facility will be increasingly less able to function at the levels of service and safety for which it was originally designed. Decreases in the level of service are evident in reduced traveling speeds, increased density of traffic flow, as well as in the traffic backups at some interchanges during commuting hours and other peak travel periods and backups and congestion due to crashes and vehicle breakdowns.

The I-93 Project involves a combination of transportation infrastructure improvements and strategies for the Corridor. The main element of the proposed project involves widening I-93 from the existing two-lane highway in each direction to a four-lane highway in each direction. The proposed improvements begin in the Town of Salem, New Hampshire at the Massachusetts/New Hampshire state line and extend northerly through Salem, Windham, Derry and Londonderry, and into Manchester, ending at the I-93/I-293 interchange. In addition, the proposed project includes: design modifications and infrastructure improvements for the five interchanges and local roads within the project corridor; three new park-and-ride lots; expanded commuter bus service to Boston; and Intelligent Transportation System (ITS) equipment and strategies. The State currently estimates that the total construction cost of the I-93 Project, including expenditures to date, is approximately \$606 million through Fiscal Year 2020.

I-93 within the Corridor has not been substantially reconstructed or widened since it was first constructed in the 1960's. The State Legislature formally recognized the need to widen this section of I-93 when it included the project in the State's first Ten-Year Highway Plan enacted in 1986. This plan, which sets forth proposed long-term capital improvements for transportation in New Hampshire, is updated and revised every two years.

In 1991, the Federal Highway Administration (the "FHWA") and the State initiated preliminary design and environmental evaluation work for the I-93 Project.

The National Environmental Policy Act ("NEPA") requires federal agencies to prepare environmental impact statements ("EISs") for major Federal actions that significantly affect the quality of the human environment. An EIS is a full disclosure document that (i) details the process through which a transportation project was developed, (ii) includes consideration of a range of reasonable alternatives and (iii) analyzes environmental laws and executive orders. The EIS process is completed in the following ordered steps: Notice of Intent ("NOI"), Draft EIS, Final EIS and Record of Decision ("ROD").

The NOI is published in the Federal Register by the lead Federal agency and signals the initiation of the process. Scoping, an open process involving the public and other Federal, State and local, agencies, commences immediately to identify the major and important issues for consideration during the study. Public involvement and agency coordination continues throughout the entire process. The Draft EIS provides a detailed description of the proposal, the purpose and need, reasonable alternatives, the affected environment, and presents analysis of the anticipated beneficial and adverse environmental effects of the alternatives. Following a formal comment period and receipt of comments from the public and other agencies, the Final EIS is developed and issued. The Final EIS addresses the comments on the draft and identifies, based on analysis and comments, the "preferred alternative."

An NOI to prepare an EIS for the I-93 Project was published in the Federal Register on February 21, 1992. Questions raised regarding future traffic volumes and the relationship between the I-93 improvements and the rest of the State's transportation system prompted the State to develop a Statewide Transportation Model (the "Model"). In 1999, following completion of the Model, the EIS process was restarted and a new NOI was published in the Federal Register on October 27, 2000.

In a Draft EIS, all reasonable alternatives should be discussed at a comparable level of detail. There is no requirement at this stage to have a "preferred alternative". However, if an official position has been taken on one of the alternatives, it can be stated as the selected alternative (the "Selected Alternative"). The Draft EIS was issued in September 2002.

After a series of public hearings and interagency coordination, the Final EIS for the I-93 Project was issued in April 2004. The Selected Alternative widens I-93 from the existing two lanes to four lanes in each direction from Salem to Manchester, improves existing interchanges, reconstructs 44 bridges and constructs new park-and-ride lots.

On June 28, 2005, the FHWA issued a ROD approving the Selected Alternative for implementation.

In February 2006, the Conservation Law Foundation (“CLF”) brought suit in US District Court for the District of New Hampshire against FHWA and the State challenging the ROD and alleging violations of NEPA and the Federal Aid Highway Act. On August 30, 2007, the District Court rejected a majority of the claims raised by CLF, but the Court did hold that traffic projections in the 2004 Final EIS relied on outdated population and growth forecasts and directed the State and FHWA to prepare a focused Supplemental Environmental Impact Statement (“SEIS”) addressing the effects of potential indirect employment and population growth on: (1) the performance of the 2005 Selected Alternative from the 2004 SEIS (8-lane alternative) in reducing traffic congestion; (2) traffic on secondary roads; and (3) air quality issues. The District Court order was not appealed and the State proceeded to comply with its terms.

An NOI to prepare an SEIS for the project was published in the Federal Register on March 12, 2008. The Draft SEIS was issued in August 2009, a public hearing was held on September 22, 2009, and the Final SEIS was published in May 2010. The Supplemental Record of Decision (“SROD”) was issued by FHWA on September 20, 2010. This completed the NEPA process and allowed the New Hampshire Department of Transportation (the “Department”) to move forward with the I-93 Project.

The I-93 Project is included in the Ten-Year Transportation Improvement Plan 2011-2020 (the “Ten-Year Plan”) which was approved by the legislature and signed into law by the Governor on June 28, 2010. The I-93 Project is identified as one of three main priorities of focus in such Ten-Year Plan. (See *Introduction and Program Responsibility and Management – Ten-Year Plan* for information concerning the State legislature’s current review of the Ten-Year Plan.) The Statewide Transportation Improvement Program (“STIP”) 2009-2012 approved by FHWA and the Federal Transit Administration on August 13, 2010 funds the portions of the I-93 Project started and to be started in the years 2009-2012.

Consistent with the requirements of federal law, the STIP was developed in coordination with the four Metropolitan Planning Organizations (“MPOs”) within the State. The I-93 Project has been included in the applicable MPO Metropolitan Transportation Plans (“MTP”) and Transportation Improvement Programs (“TIPs”). Because the State contains areas that have not attained the National Ambient Air Quality Standards for ozone and carbon monoxide, a conformity analysis was required. Each of the MTPs and TIPs, which together include the I-93 Project in its entirety, have been found to conform to the New Hampshire Statewide Implementation Plan and the Motor Vehicle Emissions Budget for ozone.

### **Work Completed to Date**

During the lawsuit brought by CLF described above, the CLF agreed not to challenge projects that would not necessitate the widening of the highway. These projects fell into two categories: repair/replacement of ‘red-listed’ bridges and construction of park and ride (“PNR”) facilities. Early action projects included in this preliminary agreement that have been completed to date are the Cross St. bridge replacement (Salem), Exit 2 PNR (Salem), Exit 5 PNR (Londonderry), Exit 5 bus terminal and bus maintenance facility and reconstruction of a portion of Rte. 28 (Londonderry). Another early action project to remove/reconstruct 7 ‘red-listed’ bridges at Exit 1 was completed in November 2009.

Additional federally funded construction work allowed by this agreement focused on removing traffic from ‘red-listed’ bridges in an effort to improve safety along the I-93 corridor, including two projects at Exit 3 in Windham (the “Windham Projects”) and one at Exit 5 in Londonderry. The Windham Projects include the southbound off-ramp and bridges over NH 111 and NH 111A, and approximately 3 miles of northbound mainline reconstruction. The last of these projects was completed in March 2012.

As of March 2012, a total of sixteen construction contracts with a total value of approximately \$235 million had been awarded, twelve of which, with an aggregate value of \$151 million, are complete and approximately \$31 million had been expended on the four active construction contracts (three of which were funded with the 2010 Bonds). Funding for construction has been through annual federal highway appropriations with the matching portion financed by a combination of state highway funds and turnpike toll credits.

## **Funding Plan**

Construction is being advanced in a prioritized fashion that provides meaningful progress in incrementally advancing the I-93 Project with available financial resources. The work in the Corridor is divided into three distinct parts: (1) Early Action Projects; (2) Mainline Construction Priorities; and (3) remaining Mainline Construction – Capacity Improvements.

Early Action Projects – These projects are standalone projects that have independent utility from mainline construction. This phase addresses seven ‘red-listed’ bridges and constructs PNR facilities with full service bus terminals to support and improve commuter alternatives. Of the ten early action projects, eight are complete and two are under construction.

Mainline Construction Priorities – The projects in this phase will improve safety and infrastructure condition from Exit 1 to Exit 3 and at Exit 5, areas where general safety and infrastructure deficiencies are of most urgent concern. This group of projects will address the remaining 12 ‘red-listed’ bridges in the corridor and will reconstruct four of the five interchanges to improve safety and capacity and address current principal traffic bottlenecks. There are a total of 10 planned projects included in this phase, of which three are complete, four are under construction (three of these were funded with proceeds of the 2010 Bonds) and the remaining three (which will be funded with the proceeds of the 2012 Bonds) are forthcoming.

Mainline Construction – Capacity Improvements – This phase includes the remaining work in the Corridor and will address capacity improvements between Exit 3 and Exit 5 and north of Exit 5 to the project limits in Manchester and south of Exit 1 to the Massachusetts border. There are a total of eight planned projects included in this phase.

The proceeds of the 2012 Bonds are expected to be used to pay costs related to three portions of the I-93 Project: (i) the Exit 2 Interchange and Mainline Improvements (ii) the Exit 3 Area – Southbound Mainline and NH 111 and (iii) Exit 3 Area Mainline, Northbound Ramps and NH 111A Improvements.

## **PLAN OF FINANCE**

### **Estimated Sources and Uses of Funds**

The table below sets forth the estimated sources and uses of the 2012 Bond proceeds.

#### **Sources of Funds**

Par Amount	\$98,250,000.00
Original Issue Premium	<u>16,745,244.60</u>
Total Sources of Funds	\$114,995,244.60

#### **Uses of Funds:**

Project Fund Deposit	\$114,526,747.78
Cost of Issuance	240,487.50
Underwriters’ Discount	<u>228,009.32</u>
Total Uses of Funds	\$114,995,244.60

## THE 2012 BONDS

### Description of the 2012 Bonds

The 2012 Bonds are being issued in the aggregate amount of \$98,250,000, and will mature on September 1 in the years and amounts, shown on the inside cover of this Official Statement. The 2012 Bonds will be dated their date of issuance. Interest on the 2012 Bonds will be paid on March 1 and September 1 of each year, commencing September 1, 2012. The 2012 Bonds are not subject to redemption prior to maturity.

The 2012 Bonds are being issued only as fully registered bonds and, when issued, will be registered in the name of Cede & Co., as nominee for the Depository Trust Company (“DTC”), New York, New York. DTC will act as securities depository for the 2012 Bonds. Purchases of beneficial interest in the 2012 Bonds will be made in book-entry form in the denomination of \$5,000 or any integral multiple thereof. Purchasers will not receive certificates representing their interest in 2012 Bonds purchased. So long as DTC or its nominee, Cede & Co., is Bondholder, payments of the principal of and interest on the 2012 Bonds will be made directly to such Bondholder. Disbursement of such payments to the DTC Participants (hereinafter defined) is the responsibility of DTC and disbursements of such payments to Beneficial Owners (hereinafter defined) is the responsibility of the DTC Participants and the Indirect Participants (hereinafter defined). See *Book-Entry Bonds*.

### Registration and Exchange of 2012 Bonds

So long as the 2012 Bonds are maintained under a book-entry only system, Beneficial Owners (hereinafter defined) thereof will have no right to receive physical possession of the 2012 Bonds, and transfers of ownership interests in the 2012 Bonds will be made through book-entries by DTC and the Direct Participants. See *Book-Entry Bonds*.

If the book-entry only system is discontinued, the 2012 Bonds, upon surrender thereof at the corporate trust office of the Trustee, together with an assignment duly executed by the registered owner or his/her attorney or legal representative in such form as shall be satisfactory to the Trustee, may be exchanged for an equal aggregate principal amount of 2012 Bonds of the same maturity, of any authorized denomination or denominations, and bearing interest at the same rate as the 2012 Bonds surrendered for exchange.

The transfer of any 2012 Bond may be registered only upon the books kept for the registration and transfer of bonds upon surrender of such bond to the Trustee, together with an assignment duly executed by the registered owner or his/her attorney or legal representative in such form as shall be satisfactory to the Trustee.

Upon any exchange or registration of transfer, the State shall execute, and the Trustee shall authenticate and deliver in exchange for such bond within a commercially reasonable time according to then prevailing industry standards, a new 2012 Bond or Bonds, registered in the name of the transferee, in authorized denomination or denominations, in an aggregate principal amount equal to the principal amount of the 2012 Bond surrendered, of the same maturity and bearing interest at the same rate.

The State or the Trustee may make a charge for every such exchange or registration of transfer of 2012 Bonds sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or registration of transfer, but no other charge shall be made to any bondholder for the privilege of exchanging or registering the transfer of 2012 Bonds under the provisions of the Trust Agreement.

## BOOK-ENTRY BONDS

### General

**The information provided under this caption *Book-Entry Bonds – General* has been provided by DTC. No representation is made by any of the State, the Trustee or the Underwriters as to the accuracy or**

**adequacy of such information provided by DTC or as to the absence of material adverse changes in such information subsequent to the date hereof.**

DTC will act as securities depository for the 2012 Bonds. The 2012 Bonds 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 certificate will be issued for each maturity of the 2012 Bonds, each in the aggregate principal amount of such maturity, and each such certificate 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 rating: AA+. 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).

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 State 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 State believes to be reliable, but the State takes no responsibility for the accuracy thereof.

### **Limitations**

For so long as the 2012 Bonds are registered in the name of DTC or its nominee, Cede & Co., the State and the Trustee will recognize only DTC or its nominee, Cede & Co., as the Registered Owner of such 2012 Bonds for all purposes, including payments, notices and voting.

Because DTC is treated as the Registered Owner of the 2012 Bonds for substantially all purposes under the Trust Agreement, Beneficial Owners may have a restricted ability to influence in a timely fashion remedial action or the giving or withholding of requested consents or other directions. In addition, because the identity of Beneficial Owners is unknown to the State, to DTC and to the Trustee, it may be difficult to transmit information of potential interest to Beneficial Owners in an effective and timely manner. Beneficial Owners should make appropriate arrangements with their broker or dealer regarding distribution of information regarding the 2012 Bonds that may be transmitted by or through DTC.

Neither the State nor the Trustee shall have any responsibility or obligation with respect to:

- (i) the accuracy of the records of DTC, its nominee or any DTC Participant with respect to any ownership interest in the 2012 Bonds;
- (ii) the transfer of any Beneficial Owner's ownership interest in such Beneficial Owner's 2012 Bonds;
- (iii) the delivery to any DTC Participant, any Beneficial Owner or any other person, other than DTC, of any notice with respect to any 2012 Bonds;
- (iv) the payment to any DTC Participant, any Beneficial Owner or any other Person, other than DTC, of any amount with respect to the principal of or premium, if any, or interest on, the 2012 Bonds.

Further, neither the State nor the Trustee can provide any assurances that DTC, the DTC Participants and such other intermediaries that may exist between the State and the beneficial owners will serve and act in the manner described in this Official Statement.

Prior to any discontinuation of the book-entry system with respect to the 2012 Bonds as hereinabove described, the State and the Trustee may treat DTC as, and deem DTC to be, the absolute owner of the 2012 Bonds for all purposes whatsoever, including, without limitation:

- (i) the payment of principal of, premium, if any, and interest on the 2012 Bonds;
- (ii) giving notices of matters with respect to the 2012 Bonds; and
- (iii) registering transfers with respect to the 2012 Bonds.

### ANNUAL DEBT SERVICE REQUIREMENTS

The following table sets forth for each State fiscal year ending June 30 the scheduled annual debt service requirements for the 2010 Bonds and the 2012 Bonds.

Fiscal Year Ending June 30	2010 Bonds		2012 Bonds		Total Debt Service**
	Principal	Interest*	Principal	Interest	
2012	-	\$ 3,632,925	-	-	\$ 3,632,925
2013	-	3,632,925	-	\$ 3,364,917	6,997,842
2014	-	3,632,925	\$11,065,000	4,359,350	19,057,275
2015	-	3,632,925	11,290,000	3,994,475	18,917,400
2016	-	3,632,925	11,800,000	3,445,250	18,878,175
2017	-	3,632,925	12,390,000	2,853,200	18,876,125
2018	-	3,632,925	12,985,000	2,236,675	18,854,600
2019	-	3,632,925	13,620,000	1,576,700	18,829,625
2020	-	3,632,925	14,300,000	888,100	18,821,025
2021	\$ 4,200,000	3,550,311	10,800,000	270,000	18,820,311
2022	14,400,000	3,170,049	-	-	17,570,049
2023	14,790,000	2,551,902	-	-	17,341,902
2024	15,145,000	1,884,279	-	-	17,029,279
2025	15,530,000	1,165,678	-	-	16,695,678
2026	<u>15,935,000</u>	<u>397,100</u>	<u>-</u>	<u>-</u>	16,332,100
Total*	\$80,000,000	\$45,018,544	\$98,250,000	\$22,988,667	

\* Gross Interest shown (See *Direct Payments with respect to the 2010 Bonds* below).

\*\*Totals may not add due to rounding.

#### **Direct Payments with respect to the 2010 Bonds.**

The 2010 Bonds were issued pursuant to the American Recovery and Reinvestment Act of 2009 (“ARRA”) in the amounts of \$20,040,000 and \$59,960,000 as “Build America Bonds” and “Recovery Zone Economic Development Bonds”, respectively. The State elected to receive subsidy payments (“Direct Payments”) from the United States Treasury equal to 35% of the taxable interest the State pays on the “Build America Bonds” and to 45% of the taxable interest the State pays on the “Recovery Zone Economic Development Bonds”. To receive the Direct Payments, the State is required to make certain filings with the Internal Revenue Service. If the State fails to make the required filings, it will not be eligible to receive the Direct Payments. Additionally, the proceeds of “Build America Bonds” and “Recovery Zone Economic Development Bonds” have a number of limitations on their use. If the State were to use the proceeds of the 2010 Bonds for expenditures other than capital expenditures, reasonably required reserve funds, and costs of issuance, the 2010 Bonds would not be eligible for Direct Payments. Direct Payments are treated as overpayments of tax, and accordingly are subject to offset against certain amounts that may

be owed by the State to an agency of the United States of America. Finally, it is possible that the Direct Payments could be reduced or eliminated as a result of a change in federal law.

The State covenanted in the First Supplemental Trust Agreement to take all lawful action necessary to comply with all requirements of the Code that must be satisfied subsequent to the issuance of the 2010 Bonds in order that the 2010 Bonds be or continue to be treated as “qualified bonds” for purposes of the Code and to make all required filings in accordance with applicable rules of the United States Treasury in order to receive the Direct Payments contemporaneously with the payment of interest due on the 2010 Bonds, and to deposit such payments, upon receipt, in the Debt Service Fund or the Federal Highway Grant Anticipation Bond Trust Fund, as directed by the State Treasurer. The 2010 Memorandum of Agreement provides that in the event that the U.S. Treasury were to suspend, reduce or discontinue Direct Payments, FHWA will reimburse the State for the increased interest costs associated with the 2010 Bonds. To date, the State has received all Direct Payments as scheduled.

## SECURITY FOR THE BONDS

### Limited Obligations

**The Bonds are special limited obligations of the State payable from and secured solely by a pledge of (i) Pledged Revenues, (ii) all moneys and securities, and any investment earnings with respect thereto, in all Funds and Accounts established pursuant to the Trust Agreement, other than the Project Fund and the Rebate Fund and (iii) any amounts payable to the State by a Hedge Provider pursuant to a Qualified Hedge Agreement (collectively, “Pledged Funds”). The Bonds are payable solely from Pledged Funds and the full faith and credit of the State has not been pledged under the Trust Agreement.**

While application of Pledged Funds (which include federal aid for highways received by the State from the United States pursuant to Title 23 of the United States Code (“Title 23”)) to the payment of principal of and interest on the Bonds is permitted under federal law and may be made without any further appropriation under State law, the 2010 Memorandum of Agreement and the 2012 Memorandum of Agreement (each a Federal Aid Agreement under the Trust Agreement) do not create any right in any party (other than the Department) against FHWA and do not constitute commitments, guaranties or obligations on the part of the United States to provide for the payment of debt service on the Bonds.

### Pledged Funds

The Federal government makes federal aid available to state and local entities, including the State, under a number of federal programs for highway, safety, transit, and motor carrier projects. See *Information Concerning the Funding of Federal-Aid Highways* below for a detailed explanation of the federal aid highway program and its history of funding in the State. The Act authorizes the State to pledge any federal aid grants received or to be received for debt service and related issuance costs on the Bonds directly to the Trustee. Federal Highway Funds will be paid by the State or on behalf of the State directly to the Trustee without the requirement of further legislative appropriation in each year in amounts necessary to pay the debt service on the Bonds. Pursuant to the 2012 Memorandum of Agreement, FHWA has agreed that the I-93 Project will be designated as an Advance Construction project and that the State may request four (4) business days prior to each debt service payment date that FHWA pay the debt service on the Bonds to the Trustee generally at least three Business Days prior to each debt service payment date. The Advance Construction designation will ensure that the I-93 Project follows federal aid procedures and will preserve the eligibility to reimburse debt-related costs with future federal aid funds.

The Trust Agreement sets forth the Events of Default relating to the Bonds, which include failure to pay debt service when due or failure to perform the covenants, agreements and conditions contained in the Trust Agreement.

The Trust Agreement provides that for each of the Federal Fiscal Years during which Bonds are Outstanding, (i) as soon as practicable prior to such Federal Fiscal Year, the State agrees that it will cause the Department to request Obligation Authority sufficient to pay debt service on the Bonds and other Bond Related Costs coming due during such Federal Fiscal Year and (ii) the State agrees that it will obligate (to the extent not

previously obligated) Obligation Authority to make debt service payments on the Bonds and other Bond Related Costs coming due in that Federal Fiscal Year prior to obligating Obligation Authority for any other purpose coming due in that Federal Fiscal Year or subsequent Federal Fiscal Years. In any event, the State shall set aside Obligation Authority sufficient for scheduled payments of debt service and other Bond Related Costs.

Under the Trust Agreement, the State has covenanted that, upon the occurrence of any Event of Default (which Event of Default has not been remedied), and upon demand by the Trustee, it shall pay over to the Trustee, to the extent permitted by law, any Pledged Funds not otherwise held by the Trustee in a Fund or Account. The Trust Agreement provides that upon the occurrence of an Event of Default, the Trustee may proceed either at law or in equity to protect and enforce the rights of the owners of the Bonds under the terms of the Trust Agreement or the laws of the State. The Trust Agreement also provides that the owners of a majority in aggregate principal amount of the Bonds then outstanding may direct the time, method and place of any proceeding for any remedy available to the Trustee, unless the Trustee determines that such direction would subject it to personal liability or be unjustly prejudicial to the owners not parties to such direction.

The Trust Agreement provides that neither the Trustee nor the owners of the Bonds shall have any right to accelerate the principal of or interest on the Bonds.

If an Event of Default has occurred, no owner of a Bond shall have any right to institute any suit, action or proceeding in equity or at law to exercise any remedy or otherwise take action to enforce the terms of the Trust Agreement unless the owners of at least 25% in aggregate principal amount of the Bonds then outstanding have requested the Trustee to act, and have afforded the Trustee adequate security or indemnity against the Trustee's costs, expenses and liabilities and the Trustee shall not have complied with such request within a reasonable time.

For a more complete description of the remedies available to the owners of the Bonds, See *Appendix A - Summary of Certain Provisions of the Trust Agreement – Events of Default*.

The remedies available to the Bondholders upon the occurrence of an Event of Default are limited and are in many respects dependent upon judicial actions which are often subject to discretion and delay.

See *Security for the Bonds – Payments of Pledged Funds to the Trustee* below.

Pledged Funds, as defined in the Trust Agreement, include:

(i) all eligible Federal Highway Funds received after the date of the Trust Agreement by the State and any other moneys deposited to or held for the credit of the Federal Highway Grant Anticipation Bond Trust Fund established under the Act (other than the Project Fund) so long as any Bonds are Outstanding and any rights to receive the same;

(ii) all moneys and securities 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; and

(iii) any amounts payable to the State by a Hedge Provider pursuant to a Qualified Hedge Agreement.

Federal Highway Funds consist of federal highway construction reimbursements and any other federal highway assistance received from time to time by the State with respect to the Federal Highway Construction Program under or in accordance with Title 23 or any successor program established under federal law.

Pledged Funds include any funds paid by FHWA to the Trustee directly pursuant Section 604 of the Trust Agreement or otherwise that would have been paid by FHWA to the State but for a specific agreement between the FHWA and the Department and/or the State to pay such moneys directly to the Trustee.

## **Payments of Pledged Funds to the Trustee**

The Trust Agreement provides that there shall be deposited into the Debt Service Fund (i) accrued interest, if any, received at the time of the issuance of any Bonds; (ii) any capitalized interest from the proceeds of a Series of Bonds; (iii) amounts paid to the Trustee pursuant to the Trust Agreement (as described in the following paragraph) constituting Federal Highway Funds and any other moneys received by the Trustee accompanied by directions that such moneys are to be deposited into the Debt Service Fund.

If Federal Highway Funds payable to the State are paid first to the State, the State will pay the amount of Federal Highway Funds required under the Trust Agreement to the Trustee by the dates set forth in this paragraph. Not later than seven (7) days prior to each Bond Payment Date, the State will transfer to the Trustee, or shall request FHWA to pay to the Trustee, Federal Highway Funds equal to the amount of the Bond Payment becoming due to the Trustee for receipt by the Trustee four Business Days (or such other date prior to the Bond Payment Date if limited by FHWA) prior to the respective Bond Payment Date. The Trustee shall deposit the Bond Payments received by the Trustee as set forth in the Trust Agreement. The amounts on deposit in each account of the Debt Service Fund shall be used only for the payment of the Series of Bonds for which the deposit was made. Notwithstanding anything to the contrary set forth in the Trust Agreement, if there are not sufficient amounts on deposit in the Debt Service Fund three Business Days prior to the Bond Payment Date, the State shall immediately pay from the Federal Highway Grant Anticipation Bond Trust Fund, or request FHWA to pay, Federal Highway Funds to the Trustee in an amount equal to such deficiency for receipt by the Trustee or other paying agent on the next succeeding Business Day.

## **Issuance of Additional Bonds**

The Trust Agreement permits the issuance of Additional Bonds payable on a parity with the 2010 Bonds and the 2012 Bonds upon meeting the conditions of the Trust Agreement, as described in *Appendix A – Summary of Certain Provisions of the Trust Agreement – Conditions to Issuance of Bonds*. Subject to complying with the limits established in the Act and the Trust Agreement, the State may issue additional Bonds in the future for any lawful purpose. The State legislature may, from time to time, authorize additional projects to be funded in whole or in part with proceeds of Additional Bonds. The Trust Agreement requires, among other things, that before any Series of Additional Bonds is issued for other than refunding purposes, (i) a certificate of an Authorized Officer of the State has been delivered stating that as of the delivery of such Additional Bonds and application of their proceeds, no Event of Default under the Trust Agreement will have happened and will then be continuing, (ii) a certificate of an Authorized Officer of the State has been delivered that demonstrates that the eligible Obligation Authority during the most recently completed Federal Fiscal Year was equal to at least three times (300%) of the Maximum Annual Debt Service in the current and any future Federal Fiscal Year on all Outstanding Bonds and on the Additional Bonds proposed to be issued excluding, in the case of Refunding Bonds, the debt service on the Bonds to be refunded thereby and (iii) a certificate of an Authorized Officer stating that a Federal Aid Agreement has been entered into or supplemented to provide for FHWA reimbursement to cover the debt service on the Additional Bonds.

## **INFORMATION CONCERNING THE FUNDING OF FEDERAL-AID HIGHWAYS**

### **The Federal-Aid Highway Program (FAHP)**

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

Within the U.S. Department of Transportation, FHWA is the federal agency responsible for administering the FAHP. The FAHP is financed from the transportation user-related revenues deposited in the Federal Highway Trust Fund (“HTF”). The primary source of revenues in the HTF is derived from the federal excise taxes on motor fuels. Other taxes include excise taxes on tires, trucks and trailers, and truck use taxes.

The Federal-Aid Highway Program is a reimbursement program. New Hampshire is responsible for the operation and maintenance of federal-aid highways in the State. Once projects are approved by FHWA and funds are obligated, the federal government makes payments to the states for costs as they are incurred on projects. States also may apply to be reimbursed for debt service on obligations issued to finance an approved project. With few exceptions, the federal government does not pay for the entire cost of a federal-aid project. Federal reimbursements are typically required to be matched with state and/or local funds. The maximum federal share is specified in the federal legislation authorizing the program. Most projects have an 80 percent federal share, while interstate rehabilitation and maintenance projects typically have been funded with a 90 percent federal share. The act of obligation commits the federal government to reimburse expenditures on the project up to a predetermined matching share (typically 80 percent). Toll credits are certified by FHWA and may be accumulated and used by a state to satisfy its matching obligation. New Hampshire has accumulated toll credits from tolls collected on the State transportation system and will use toll credits to satisfy its matching obligation for the FHWA debt service reimbursements on the Series 2012 Bonds.

Funding under the Federal-Aid Highway Program is provided to states through a multi-step funding cycle that includes: (1) multi-year authorization by Congress of the funding for various highway programs, typically on a multi-year basis; (2) apportionment and allocation of funds to the states each Federal Fiscal Year according to statutory formulas or, for some funding categories, through administrative action; (3) obligation of funds, which is the federal government's commitment to pay or reimburse states for the federal share of an approved project's eligible costs; (4) appropriations by Congress specifying the amount of funds available for the year to liquidate obligations; (5) program implementation, which covers the programming and authorization phases; and (6) reimbursement by the federal government of the eligible project costs. Each of these steps is described in more detail under *Federal Aid Funding Procedures* below.

It should be noted that the terms and conditions of participation in the FAHP 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 FAHP will not be changed in the future in a manner that may adversely affect the ability of the State to receive adequate Federal Highway Funds to pay the debt service on the 2012 Bonds.

Certain FAHP features or requirements are explained or further defined where they appear below but are introduced here for reference:

- **HTF:** 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 revenue on federal programs. For the FAHP, authorization historically has been provided on a multi-year basis. This, together with the availability of HTF revenue 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: 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 June 30, 2012. See *Information Concerning the Funding of Federal-Aid Highways – Reauthorization and Proposed Legislation and SAFETEA-LU* below.
- **Apportionment:** For each Federal Fiscal Year ("FFY"), FHWA apportions the authorization 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:** "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 Federal Fiscal Year is called its "Obligation Authority."
- **Advance Construction:** The Advance Construction 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 Obligation Authority needed to cover the federal government's share. The I-93 Project is an Advance Construction Project.

- **Partial conversion of Advance Construction:** Under partial conversion of Advance Construction, in a given year a state may convert Advance Construction to Obligation Authority and thus be eligible for reimbursement for a portion of the federal share of an Advance Construction project in that or in a subsequent FFY. This removes any requirement for the state to wait for reimbursement until the full amount of Obligation Authority needed for the entire project is available.

These features of the FAHP work in a complementary fashion to provide a regular flow of federal reimbursements over the years to state highway projects.

The participation of the State in such reimbursements, and the role of such participation in providing payment and security for the 2012 Bonds, is discussed in *State Participation in the Federal-Aid Highway Program* herein.

Although FHWA provides funding for eligible highway projects, federal-aid highways are under the administrative control of the state or local government responsible for their operation and maintenance.

Title 23, entitled "Highways," includes most of the federal laws that govern the FAHP. Generally, Title 23 embodies those substantive provisions of highway law that Congress considers to be continuing and which need not be reenacted each time the FAHP is reauthorized. Periodically, sections of Title 23 may be amended or repealed through surface transportation acts. Some provisions of surface transportation law are not set forth in Title 23. In addition, authorization amounts are generally not set forth in Title 23.

## **Reauthorization and Proposed Legislation**

**Generally.** FAHP must be periodically reauthorized by Congress. Following a number of prior multi-year authorizations, the Transportation Equity Act for the 21st Century ("TEA-21") was enacted in 1998 and authorized programs over the six-year period from Federal Fiscal Years 1998 through 2003. SAFETEA-LU became law on August 10, 2005 and expired on September 30, 2009. Between the expiration of TEA-21 in September 2003, and the enactment of SAFETEA-LU in August 2005, Congress enacted 12 interim authorizations for varying periods. Since the expiration of SAFETEA-LU in September 2009, the Federal-Aid Highway Program has been extended nine times. The most recent extension expires on June 30, 2012.

**Although interim authorizations and extensions have been enacted by Congress in the past, no assurance can be given that such measures will be enacted in the future to maintain the flow of federal-aid funding upon termination of either a short-term or multi-year authorization period.**

**Proposed Legislation for New Multi-Year Authorization.** On November 17, 2011, Congress adopted a law providing funding for the USDOT through Federal Fiscal Year 2012 at a level 4.8 percent lower than the prior year (\$39.1 billion as compared to \$41.1 billion). However, such funding is not equivalent to a multi-year authorization of the FAHP. On March 14, 2012, a bill was approved by the Senate authorizing a two-year program that continues Federal Fiscal Year 2011 funding levels plus inflation for surface transportation projects. In the House of Representatives, the Committee on Transportation and Infrastructure has passed a five-year reauthorization bill that would continue Federal Fiscal Year 2012 funding levels for surface transportation programs; however, that bill does not have widespread support and House Republican Leaders removed the bill from further consideration. House Republican Leaders continue to search for support for a five-year bill. No assurance can be provided that such efforts will result in a new multi-year authorization. On April 18, 2012, the House of Representatives passed another 90-day extension of SAFETEA-LU and new program changes that allowed both houses of Congress to appoint conferees to negotiate a long-term reauthorization. The Senate announced its 14 conferees on April 24, 2012 and the House announced its 33 conferees on April 25, 2012.

## **Federal Highway Trust Fund (HTF)**

The HTF is the primary funding source for the FAHP. The HTF is divided into two principal accounts, the Highway Account, which funds highway and intermodal programs, and the Mass Transit Account. Federal motor fuel taxes are the major source of HTF income. Other HTF income includes truck use taxes and excise taxes on tires, trucks and trailers. 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 HTF was created as a user-supported fund. The revenues of the HTF were intended for financing highways, with the taxes dedicated to the HTF paid by the users of highways. This principle is still in effect, but the tax structure has changed since 1956. Major revisions occurred as a result of the Surface Transportation Assistance Act ("STAA") of 1982 and the Deficit Reduction Act of 1984. These acts increased the motor-fuel taxes for the first time since 1959. The STAA also established the Mass Transit Account in the HTF to receive part of the motor-fuel tax. During the time that SAFETEA-LU was being developed, a number of changes impacting the HTF were adopted in the American Jobs Creation Act of 2004. The American Jobs Creation Act replaced the reduced tax rates that applied to gasohol with a credit paid from the general fund of the U.S. Treasury and ended the retention of a portion of the tax on gasohol by the General Fund. These actions, coupled with a number of provisions to reduce tax evasion, provided increased tax revenues to the HTF.

The passage of SAFETEA-LU extended the imposition of highway-user taxes and the transfer of such taxes to the HTF through September 30, 2011. Provisions for full or partial exemption from highway user taxes were also extended. In addition, SAFETEA-LU authorized expenditures from the HTF through September 30, 2009. To date, there have been nine (9) extensions of SAFETEA-LU, which have extended current funding, the imposition of highway user taxes and the transfer of such taxes to the HTF. Most recently, on March 29, 2012, Congress passed H.R. 4281, the ninth extension, which extended HTF expenditure authority, taxes and program authorizations through June 30, 2012. See *Information Concerning the Funding of Federal-Aid Highways – SAFETEA-LU* herein.

Federal law not only regulates the imposition of the taxes, but also their deposit into and expenditure from the HTF.

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

Motor Fuels

Gasoline and Gasohol	18.4 cents per gallon
Diesel	24.4 cents per gallon
Special Fuels:	
General rate	18.4 cents per gallon
Liquefied petroleum gas	18.3 cents per gallon
Liquefied natural gas	24.3 cents per gallon
M85 (from natural gas)	9.25 cents per gallon
Compressed natural gas	18.3 cents / 126.67 cubic feet

Tires (maximum rated load capacity)

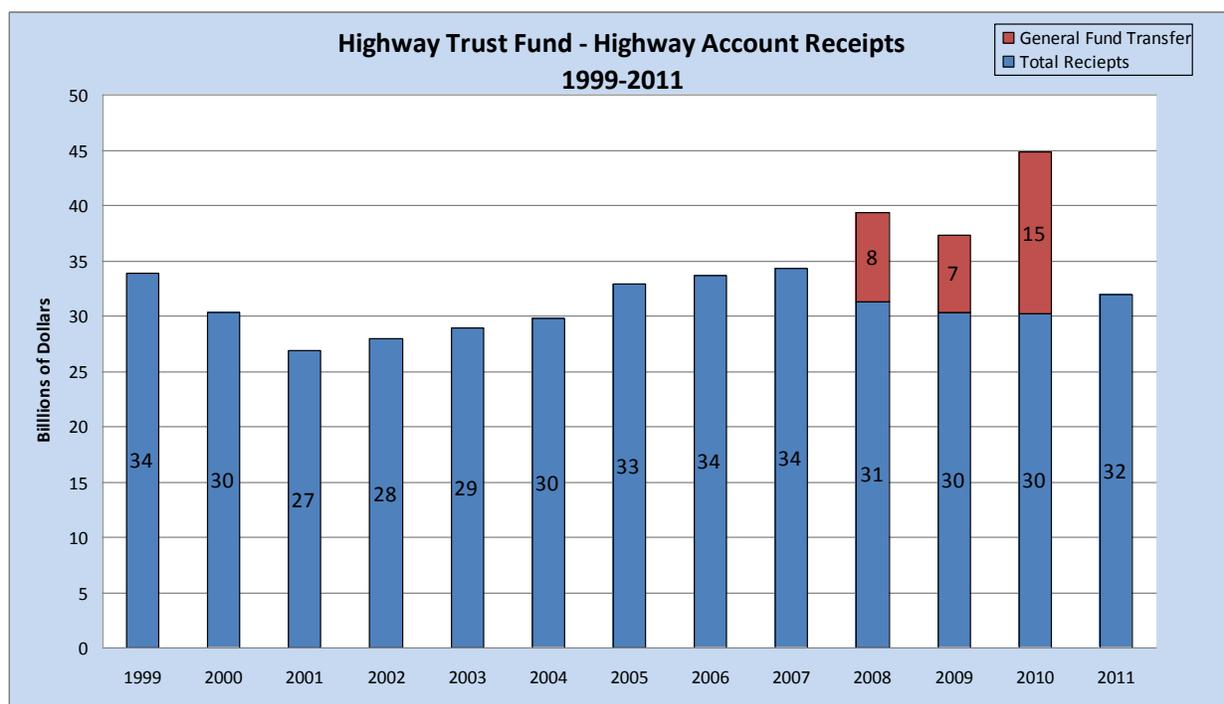
0-3,500 pounds	No Tax
Over 3,500 pounds	9.45 cents per each 10 pounds in excess of 3,500 pounds

Other Taxes

Truck and Trailer Sales	12 percent of retailer's sales price for tractors and trucks over 33,000 pounds gross vehicle weight (GVW) and trailers over 26,000 pounds GVW
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Heavy Vehicle Use	Annual tax: Trucks 55,000 pounds and over GVW, \$100 plus \$22 for each 1,000 pounds (or fraction thereof) in excess of 55,000 pounds (maximum tax of \$550)
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The following table shows actual annual HTF collections in the Highway Account for Federal Fiscal Years 1990 through 2011 (in billions), including transfers from the General Fund for Federal Fiscal Years 2008 through 2010.



Sources: FFY 1999 through FFY 2010: Highway Statistics 2010 Office of Highway Policy Information, FHWA, Table FE-201C (<http://www.fhwa.dot.gov/policyinformation/statistics/2010/fe210c.cfm>); FFY 2011: February 2012 FE-1 Report ([http://www.fhwa.dot.gov/highwaytrustfund/fe-1\\_sep11.pdf](http://www.fhwa.dot.gov/highwaytrustfund/fe-1_sep11.pdf)).

Note: Ending balances for FFY 2008 includes \$8.017 billion transferred from the General Fund in September pursuant to Public Law 110-318; ending balance for FFY 2009 includes \$7 billion transferred from the General Fund in August pursuant to Public Law 111-46; and ending balance for FFY 2010 includes \$14.7 billion transferred from the General Fund in April pursuant to Public Law 111-147.

**The terms and conditions of participation in the FAHP as described herein are those in SAFETEA-LU and are subject to change at the discretion of Congress. There can be no assurance that the laws and regulations now governing the FAHP will not be changed in the future in a manner that may adversely affect the ability of the State to receive Federal Highway Funds sufficient to enable it to pay debt service on the 2012 Bonds.**

### Federal-Aid Highway Program Reauthorization

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). 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 Federal Fiscal Years 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.

Amounts in the Highway Trust Fund can be affected by the rate of expenditure of money in the fund as well as a number of revenue-impacting factors. One significant factor is the decline in vehicle miles traveled since 2007, which impacts revenue from gasoline and diesel sales. In response to shortfalls predicted by the CBO as well as other governmental entities, Congress transferred from the federal general fund to the Highway Trust Fund in Federal Fiscal Years 2008, 2009 and 2010, an aggregate total of approximately \$34.5 billion, of which approximately \$5 billion was provided to the Mass Transit Account within the Highway Trust Fund. CBO assumes that spending from the Highway Trust Fund will continue to be controlled by limitations on obligations set in appropriation acts. For its baseline projections, CBO further assumes that those future limitations on obligations will be equal to the 2012 amounts, adjusted annually for inflation. Under such a scenario, the Highway Account will likely be unable to meet obligations in a timely manner sometime during 2013. See *Reauthorization and Proposed Legislation* above.

### **SAFETEA-LU**

On August 10, 2005, the President signed SAFETEA-LU. This program guaranteed funding for highways, highway safety, and public transportation totaling \$244.1 billion, and represents the largest surface transportation investment in United States history.

Under SAFETEA-LU, the core FAHP total obligation limitation was funded at \$34.4 billion in FFY 2005, \$35.6 billion in FFY 2006, \$39.0 billion in FFY 2007, \$41.2 billion in FFY 2008, \$40.7 billion in FFY 2009, \$41.1 billion in FFY 2010, and \$41.1 billion in FFY 2011. SAFETEA-LU retained the firewall and minimum guarantee provisions of TEA-21 and increased each state's minimum rate of return of HTF contributions from 90.5% in TEA-21 to 92% in 2008. All states were also guaranteed a total six-year average highway funding increase of at least 19 percent, when compared to the state's six-year TEA-21 funding total.

On September 30, 2009, SAFETEA-LU expired without enactment of a new six-year reauthorization program. In order to avoid a halt in the FAHP, Congress has extended the program nine times since its expiration. Most recently, on March 29, 2012, Congress passed H.R. 4281, the ninth extension, which extended Highway Trust Fund expenditure authority, taxes and program authorizations through June 30, 2012. See *Reauthorization and Proposed Legislation* above.

### **Highway Funding Equity-Minimum Funding**

TEA-21 included a minimum protected funding provision, which was designed to ensure that all states have a minimum return on the tax contributions that are made from that state into the Highway Account of the HTF. Under this provision, "donor states" will receive a minimum guaranteed level of funding. A donor state is defined as a state whose percentage share of national apportionments is less than its percentage share of national contributions to the HTF based on the latest data available at the time of apportionment.

Donor states are guaranteed receipt of an amount of funding<sup>1</sup> equal to multiplying 90.5% times the state's percentage share estimated contributions to the HTF by the national level of apportioned funds. In FFY 2007, the Equity Bonus (previously "minimum guarantee") factor increased to 91.5%; in FFY 2008 and FFY 2009, it increased again to 92%. Currently, the State is a donor state and, while it is expected to remain one for the foreseeable future, there can be no assurance that the State will continue in the future to be a donor state and therefore continue to receive funds under the minimum funding provision.

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<sup>1</sup> The Equity Bonus Program under SAFETEA-LU provides funding to states based on equity considerations. These include a minimum rate of return on contributions to the Highway Account of the HTF, and a minimum increase relative to the average dollar amount of apportionments under TEA-21. This program replaces TEA-21's Minimum Guarantee program.

## **Federal Funding Cycle**

Although FHWA provides funding for eligible highway projects, federal-aid highways are under the administrative control of the state or local government responsible for their operation and maintenance. Funding under the FAHP is provided to states through a multi-step funding cycle that includes:

- 1) multi-year funding authorization by Congress;
- 2) apportionment and allocation of funds to the states each Federal Fiscal Year according to statutory formulas or, for some funding categories through administrative action;
- 3) obligation of funds, which is the federal government's legal commitment to pay or reimburse states for the federal share of a project's eligible costs;
- 4) appropriations by Congress specifying the amount of funds available for the year to liquidate obligations;
- 5) program implementation which covers the programming and authorization phases; and
- 6) reimbursements by the federal government of the eligible project costs.

Each of these steps is described in more detail in the following section.

## **Federal-Aid Funding Procedures**

### **1. Authorization**

The first step in funding the FAHP is the development and enactment of authorizing legislation. Authorizing legislation for highways began with the Federal-Aid Road Act of 1916 and the Federal Highway Act of 1921. Since that time, the FAHP has been continued or renewed through the passage of multi-year authorization acts. Since 1978, Congress has passed highway legislation as part of larger, more comprehensive, multi-year surface transportation acts. Most recently, Congress has passed SAFETEA-LU and the extensions described above which included provisions for reauthorization of the FAHP through June 30, 2012. See *Reauthorization and Proposed Legislation* above.

The authorization act not only shapes and defines programs, but also sets upper limits (authorizations) on the funding for programs and includes provisions related to the operation of the HTF.

Once Congress has established authorizations, funds can be made available to the states. Federal programs typically operate using appropriated budget authority, whereby funds, although authorized, are not available until passage of an appropriations act. However, most FAHP programs do not require this two-step process. Through "contract authority" (a special type of budget authority), authorized amounts become available for obligation according to the provisions of the authorization act without further legislative action. For the FAHP, funds authorized for a Federal Fiscal Year are available for distribution through apportionments or allocations. The contract authority gives the states advance notice of the level of federal funding when an authorization act is enacted; this eliminates the uncertainty associated with the authorization-appropriation sequence.

The existence of dedicated revenues in the HTF and multi-year contract authorizations are designed to provide a predictable and uninterrupted flow of reimbursements to the states. The risk of contract authority lapsing between authorizing acts has been minimal, because sufficient unobligated balances have generally existed that have been used by the states, with the approval of Congress, to cover gaps in funding between multi-year reauthorization acts. See *Information Concerning the Funding of Federal-Aid Highways – SAFETEA-LU and – Lapsing of Authorization*.

### **2. Apportionment and Allocations**

For most components of the FAHP, the authorization act sets the distribution of contract authority to be apportioned and/or allocated to the states. The authorized amount for a given Federal Fiscal Year is distributed to the states through apportionments and allocations.

The distribution of funds using formulas provided in law is called an apportionment. Most federal-aid funds are distributed to states through apportionments. Each Federal Fiscal Year, FHWA has responsibility for apportioning authorized funding for the various highway programs among the states according to formulas established in the authorizing statute. Various apportionment factors are used, including lane miles, vehicle miles traveled, the amount of taxes paid into the HTF and diesel fuel usage. Each highway program has a unique set of factors that determine the apportionments to the states. Federal law assures that, notwithstanding the funding it would receive through these formulas, each state will receive at least a minimum guaranteed amount of funding. The State's funding has historically been determined by the minimum guarantee provision.

Some categories do not have a legislatively mandated distribution formula. When there are no formulas in law, these distributions are termed "allocations" which may be made at any time during the Federal Fiscal Year. In most cases, allocated funds are divided among states with qualifying projects applying general administrative criteria provided in the law.

Federal-aid highway apportionments are available to states for use for more than one year. Their availability does not terminate at the end of the Federal Fiscal Year, as is the case with most other federal programs. In general, apportionments are available for three years plus the year that they are apportioned. Consequently, when new apportionments or allocations are made, the amounts are added to a state's carryover apportionments from the previous year. The funds lapse when a state fails to obligate a year's apportionments within the period of availability (usually a total of four years) specified for the given program.

### **3. Obligation**

An obligation is a legal commitment, or promise, made by the federal government to pay, through reimbursement to a state, the federal share of an approved project's eligible costs. Eligible costs may include debt service on obligations issued to finance a project. This process allows the states to award contracts with the assurance that the federal government will reimburse its share of incurred costs. Congress places a restriction or "ceiling" on the amount of federal assistance that may be obligated during a specified time period. The obligation limitation is equal to the amount of authorized funding that Congress allows the state to obligate in an individual year. This statutory budgetary control does not affect the apportionment or allocation of funds; it serves only to control the rate at which these funds can be used. This effectively limits the amount of funds that can be used by the State.

Congress first establishes an overall obligation limitation, then FHWA distributes the Obligation Authority to states proportionately based on each state's share of apportioned and allocated revenues. The actual ratio of Obligation Authority to apportionment and allocations may vary from state to state, since some federal-aid programs are exempt from the obligation limitation. During each Federal Fiscal Year, states submit requests to FHWA to obligate funds, representing the federal share of specific projects. As a state obligates funds, its Obligation Authority balance is reduced. A state's Obligation Authority must be obligated before the end of the Federal Fiscal Year for which it is made available; if not, it will be re-distributed to the other states thus ensuring that the total limitation nationwide will be used. In August of each year, a state may receive additional Obligation Authority through a redistribution process which reallocates the unused Obligation Authority from states or programs that were unable to fully obligate their share.

The State has historically used all of its Obligation Authority in each Federal Fiscal Year and has annually received additional Obligation Authority that has been redistributed by FHWA. During TEA-21 (Federal Fiscal Years 1998-2003), the State received just over \$11.3 million in redistributed Obligation Authority. Under SAFETEA-LU (Federal Fiscal Years 2004-2011), the State received \$59.3 million in redistributed Obligation Authority.

Although a ceiling on obligations restricts how much funding may be used in a Federal Fiscal Year, based on states' individual needs, each state has flexibility within the overall limitation to mix and match the type of program funds it obligates, provided that it does not exceed the ceiling. Generally, the

unobligated balance of apportionments or allocations that a state has remaining at the end of any Federal Fiscal Year can be carried over to subsequent Federal Fiscal Years and be available for use, contingent upon the availability of Obligation Authority issued in each year.

## **Highway Program Implementation**

As a requirement for a state to receive federal reimbursements for transportation projects, each state is required to develop a long-range transportation plan. The plan must be based on realistic projections of state and federal funding. For a project to be eligible for federal reimbursement, the project must be directly identified in the long-range plan or consistent with policies and objectives identified in the long range plans and included in the four-year State Transportation Improvement Program (“STIP”). The STIP lists all projects proposed for financing in that four-year period and requires FHWA approval.

Federal fiscal management procedures must be followed by a state as it implements projects that are included in its STIP. These procedures ensure that the process is managed efficiently from project authorization to actual payment of FHWA reimbursement to the state. States are required to use a detailed accounting system to track project expenditures and reimbursements. A Federal system is also in place to track the payments that have been made to the states.

States may request FHWA approval for eligible projects either through the traditional process or through the advanced construction process as discussed below.

(a) **Traditional Process.** Under the traditional highway funding process, FHWA approves the full federal share of the funding for a project at the beginning of the project, concurrent with project authorization. The first step begins when a state requests authorization to use federal funds on a project. The project sponsor submits plans, specifications and estimates (“PS&E’s”) for a project to FHWA Division Office, and requests that FHWA approve federal funding for the federal share of the project. The project must be in the STIP and PS&Es must identify the federal funding category that will be used.

FHWA evaluates the PS&Es to ensure that the project meets all federal requirements for funding. If all requirements are met, FHWA then authorizes federal participation on the project, and obligates the federal share of project costs. Through this obligation process, FHWA makes a commitment to reimburse the state for the federal share of eligible project costs. The appropriate amount of the state’s Obligation Authority and an equivalent amount of apportionment is set aside. The state must have sufficient Obligation Authority to cover the level of federal participation it is requesting.

Once authorization for a project has been obtained, a state can advertise the project and receive bids. The state will award the contract to the lowest responsible bidder. Based on the actual bid amount, the state will submit a modified agreement to FHWA requesting any necessary adjustments to federal funding. The project agreement identifies the funds that are estimated to be expended by the state and the amount that will be reimbursed by the Federal Government.

(b) **Advance Construction Process.** To add additional flexibility for states to manage their Obligation Authority and cash flow, Advance Construction (“AC”) and partial conversion of advance construction are two techniques that states can use to facilitate federal-aid project funding.

The AC approach for authorizing projects allows states to finance projects that are eligible for federal aid without obligating the full federal share of costs at the start of the project. This process allows states to begin a project before accumulating all of the Obligation Authority needed to cover the federal share of the project. Like the traditional approach, the state submits PS&E’s to FHWA and requests project authorization. However, under AC, FHWA is asked to authorize the project without obligating federal funds. The state will provide upfront financing for the project and at a later date, when sufficient Obligation Authority is available, “convert” the AC project to a regular federal-aid project and obligate the full federal share of the project costs. At the time of conversion, the state can be reimbursed for the federal share of the costs incurred up to the point of conversion.

Partial conversion is a form of AC whereby the state converts, obligates, and receives reimbursement for only a portion of the funding of an AC project in a given year. This removes any requirement to wait until the full amount of Obligation Authority for the project is available. Using this process the state can obligate varying amounts of the project's eligible costs in each year, depending on how much of the state's Obligation Authority is available. Using the technique to partially convert the federal share makes bond and note financing more viable and federal-aid funds available to support a greater number of projects.

## **Reimbursement**

The FAHP is a reimbursement program where the state pays for completed work on a federal-aid highway project from state funds. The state then electronically transmits vouchers for the federal share of completed work and certifies to FHWA that claims for payment are in accordance with the terms of the project agreements. The State's adherence to all applicable State and federal laws and/or regulations is also verified. FHWA Division offices then review and approve requests and schedule the payments to the state. Generally within two days of the submission of the state's electronic bill, a wire transfer for payment is initiated which transfers the funds directly from a Federal Reserve Bank to the state's financial institution.

## **State Matching Requirements**

With a few exceptions, the Federal government does not pay for the entire cost of construction or improvement of federal-aid highway projects. Federal reimbursements are typically matched with state and/or local governments revenues to account for the necessary dollars to complete the project. The maximum federal share is specified in the legislation authorizing the FAHP. Most projects have an 80% maximum federal share with some allowances for 90% and 100% maximums depending on the type of project. The I-93 Projects to be funded with proceeds of the 2012 Bonds are expected to have an 80% federal share. The State intends to fund its share of the I-93 Project by using the State's toll credits, which permits the State to use certain toll revenue-based expenditures as credit toward the non-Federal matching share of programs authorized by Title 23.

## **Lapsing of Authorization**

All federal programs must be authorized through legislation that defines the programs and establishes maximum funding levels. For most programs annual appropriations acts are necessary in order to create budget authority. For many federal domestic discretionary programs, a lapsed authorization may have little or no effect on a program, as long as the revenues are appropriated. For the FAHP, however, if Congress fails to enact reauthorization legislation, the consequences of lapsed authorization are somewhat different. While Congress may pass interim legislation, the existence of contract authority and a dedicated revenue stream means that FHWA usually can continue to provide Obligation Authority by administrative action. See *Reauthorization and Proposed Legislation* above.

*[Remainder of page intentionally left blank.]*

## Rescissions

Since 2005, Congress has taken action to reduce unobligated balances of previously authorized funds by issuing the following rescissions. Not included is a rescission (FHWA Notice N 4510.711) for the end of SAFETEA-LU on September 30, 2009, in the amount of \$8.708 billion, which was reversed on March 18, 2010, through H.R. 2847; the State's share of this rescission was \$280 million.

<u>Date</u>	<u>National Amount</u>	<u>New Hampshire's Share</u>	<u>Source: FHWA Notice</u>	<u>Public Law No.</u>
12/28/2005	\$ 1,999,999,000	\$ 10,123,651	N 4510.578	109-115
03/21/2006	1,143,000,000	5,786,336	N 4510.588	109-148
07/05/2006	702,362,500	3,555,647	N 4510.606	109-234
03/19/2007	3,471,582,000	16,516,058	N 4510.643	110-5
06/20/2007	871,022,000	4,143,890	N 4510.647	110-28
03/04/2008	3,150,000,000	447,680	N 4510.673	110-161
04/13/2009	3,150,000,000	14,211,378	N 4510.707	111-8
08/13/2010	2,200,000,000	9,923,891	N 4510.729	111-226
06/30/2011	<u>2,500,000,000</u>	<u>10,884,741</u>	N 4510.735	112-10
Total	\$19,187,965,500	\$75,593,272		

All of such rescissions were spread among the 50 states on a proportional basis, the first three based on certain Federal Fiscal Year 2006 apportionments, the fourth and fifth on certain Federal Fiscal Year 2007 apportionments, the sixth on certain Federal Fiscal Year 2008 apportionments, the seventh and eighth on certain Federal Fiscal Year 2009 apportionments and the last on certain Federal Fiscal Year 2011 apportionments. The aggregate amount for these rescissions for New Hampshire was \$75.59 million, which was applied to reduce the unobligated apportionment balances from prior years. Further rescissions are possible and may have a more adverse effect on New Hampshire and its highway program. Although rescissions could be large enough to impact Obligation Authority, to date they have not. If Congress continues to require rescissions, the balances of unobligated apportionment for those federal programs that would support the I-93 Project may be reduced.

## Special Federal Provisions Relating to Debt-Financed Projects

The National Highway System Act ("NHTSA") of 1995 made several changes affecting the financing of federal-aid highway projects. Section 311 of the NHTSA significantly expanded the eligibility of bond, note and other debt instrument financing costs for federal-aid reimbursement. This change to the FAHP was codified into permanent highway law as an amendment to Section 122 of Title 23 ("Section 122"). Under Section 122, various debt-related costs became eligible for reimbursement, including principal and interest payments, issuance costs, insurance, and other costs related to a financing.

FHWA has issued guidelines for debt-financed projects. Key provisions of these guidelines are as follows:

- The project must be approved as a federal-aid, debt-financed (bond, certificate, note, or other debt instrument) project in order to receive payments for eligible debt-related costs under Section 122. Once a project is selected for debt financing, the project is submitted to the appropriate FHWA Division Office for approval as an Advance Construction project under Section 115 of Title 23. This designation ensures that the project will follow federal-aid procedures and will preserve the eligibility to reimburse debt-related costs through future federal-aid fund obligations.
- Debt-financed projects are subject to requirements of the Federal Clean Air Act and federal air quality conformity requirements.
- When the project agreement is signed, a state may elect to seek reimbursement for debt service and/or related issuance costs in lieu of reimbursement for construction costs. If a state elects to receive debt service reimbursements, a debt service schedule will be included in the project

agreement. When multiple projects are funded with the proceeds of a debt issue, each project will be assigned a prorated share of the debt-related costs.

- To comply with the intent of the fiscally constrained planning process, the federal share of the debt-related costs anticipated to be reimbursed with federal-aid funds over the life of the debt obligations should be designated as Advanced Construction. The planned amount of federal-aid reimbursements (Advance Construction conversion) should be included in the STIP, in accordance with FHWA procedures.
- Periodic debt service payments (federal-aid reimbursements) on the debt obligations would represent partial conversion of designated Advanced Construction amounts to federal aid. A state can obligate such federal aid annually over the life of the permanent financing or a state can make the conversion in one lump sum upon completion to help take out construction financing. This would follow the normal procedures for conversion of an advance construction project.
- A state may seek federal-aid reimbursements for eligible debt-related costs as the costs are incurred. Issuance costs, debt service payments, and incidental costs represent costs incurred that may be reimbursed with federal-aid funds to the extent such costs are deemed eligible.
- A state may make arrangements with the FHWA Division Office regarding the procedures under which it would submit a request to FHWA for debt-related costs. A request for debt service payment can be timed so that reimbursement could be received shortly before the debt service payment due date.
- A state may designate a trustee or other depository to receive federal-aid debt service payments directly from FHWA. FHWA has, pursuant to the terms of the 2010 Memorandum of Agreement and the 2012 Memorandum of Agreement, approved the I-93 Project as a “debt-financed” project.

## STATE PARTICIPATION IN THE FEDERAL-AID HIGHWAY PROGRAM

The availability of Federal Highway Funds to the State and/or the Trustee and the resulting ability to meet the debt service requirements on the 2012 Bonds will depend on several factors, most importantly, the amount of funding provided to the State by the federal government under the FAHP and the State’s ability to use such funding. The sections below summarize the recent history of funding levels provided to the State under FAHP and the State’s use of such funding. In addition, certain other information is provided regarding federal equity provisions and the State’s potential ability to utilize future available funding for Federal-Aid projects.

### Funding History

***Role of Obligation Authority.*** The culmination of the federal authorization and appropriation process for the FAHP is the provision of Obligation Authority to a state. Obligation Authority, 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 Obligation Authority plus prior years’ Obligation Authority obligated but not yet expended determines the maximum amount of Federal Highway Funds that a state may receive under FAHP. Although annual Obligation Authority is not a direct representation of the amount of funds a state will receive under FAHP in a given year due to lags in spending and special appropriations, Obligation Authority levels will determine over time the amount of funds that a state may receive.

***Obligation Authority provided to the State.*** Since the advent of the modern multi-year federal authorization acts in 1982, the State has received substantial funding through the FAHP. The table below details the amount of Obligation Authority made available to the State from FFY 2004 through FFY 2011. The apportionment for FFY 2011 includes a \$20 million Transportation Investment Generating Economic Recovery (TIGER II) grant.

**State of New Hampshire  
History of Apportionments and Obligation Authority  
(in millions, unaudited)**

Federal Fiscal Year <u>Ending Sept. 30,</u>	Total <u>Apportionment</u>	Special Limitation <u>Earmarks</u>	<u>ARRA</u>	Net <u>Apportionment*</u>	Formula Obligation <u>Authority**</u>
2004	\$152.70	\$8.76	\$0.00	\$143.93	\$132.71
2005	\$167.29	\$8.93	\$0.00	\$158.37	\$128.07
2006	\$189.37	\$19.55	\$0.00	\$169.82	\$128.73
2007	\$174.13	\$13.48	\$0.00	\$160.65	\$138.17
2008	\$165.62	\$17.90	\$0.00	\$147.71	\$135.06
2009	\$302.46	\$13.25	\$129.44	\$159.78	\$143.11
2010	\$205.82	\$0.00	\$0.00	\$205.82	\$157.64
2011	\$182.86	\$20.00***	\$0.00	\$162.86	\$154.14

Source: FHWA data from Fiscal Management Information System.

\*Earmarks and ARRA are not included in Net Apportionment.

\*\*Obligation Authority includes redistributed Obligation Authority. See *Information Concerning the Funding of Federal-Aid Highways—Federal Aid Funding Procedures* herein for a description of the State’s redistributed Obligation Authority.

\*\*\* TIGER II Grant

The State’s federal highway funding has increased substantially as a result of recent authorizations of the FAHP. Comparing SAFETEA-LU, including the extension (2004-2012), to TEA-21 (1998-2003), the State’s allocations and apportionments average increase was slightly less than \$21 million or 13% annually. In the prior reauthorization (comparing TEA-21 (1998-2003) to ISTE A (1992-1997)), the State’s allocation and apportionments average increase was just under \$56 million or 56% annually. No assurance can be given that the State’s federal highway funding will continue to increase or remain at the same levels in the future.

**Federal Reimbursement Received by the State**

The table below details the amount of reimbursements received by the State under the FAHP for State fiscal years 1997 through 2011.

**State of New Hampshire  
Federal Highway Funds Received  
1997 through 2011  
(in millions, unaudited)**

State Fiscal Year Ending <u>June 30</u>	Federal Reimbursement <u>Received</u>	State Fiscal Year Ending <u>June 30</u>	Federal Reimbursement <u>Received</u>
1997	\$100.10	2005	\$136.74
1998	93.53	2006	167.99
1999	110.21	2007	170.69
2000	116.32	2008	163.00
2001	124.79	2009	175.37*
2002	150.56	2010	246.87*
2003	136.43	2011	212.13*
2004	138.33		

Source: FHWA / Rapid Approval & State Payment System (RASPS).

Note: Federal Reimbursements may be more or less than Obligation Authority in any given year due to lags in timing of such reimbursements from FHWA.

\* Includes ARRA reimbursements of \$2.80 million in State FY 2009, \$64.95 million in State FY 2010, and \$42.98 million in State FY 2011.

## **Future Utilization of Pledged Federal Aid**

The State believes that sufficient Federal Highway Funds will be received during the term of the 2012 Bonds to pay debt service on the 2012 Bonds. Various factors beyond the control of the State may affect its ability to do so, including, without limitation, subsequent reauthorizations, federal budgetary limitations and other possible changes in the FAHP that cannot now be anticipated.

Under the FAHP, as projects are approved by FHWA, the aggregate dollar amount of each contract relating thereto will be obligated against the remaining annual amount of Obligation Authority that is still available to the State. The State will then pay the amounts owed under each contract as the work progresses and receive reimbursement from the federal government for the federal share of the total costs. The aggregate amount of reimbursements received by the State in any year is not necessarily equal to the State's apportionment for that year. Projects and contracts can extend over a number of years which means that 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 State expects that it will have sufficient projects which will qualify as Federal-Aid projects and allow it to access all of the Federal Highway Funds made available to it. The State also fully expects that the future anticipated funding levels will be sufficient to meet future debt service obligations.

## **PROGRAM RESPONSIBILITY AND MANAGEMENT**

### **The Act**

The 2012 Bonds are being issued under the authority granted by the Act. The Act provides for the issuance by the State Treasurer of federal highway grant anticipation bonds of the State for costs related to the I-93 Project in such amounts as the Governor and the five-member Executive Council (the "Council") shall determine, from time to time, subject to the current statutory limit of \$195 million. (See *Introduction* for information regarding a proposed statutory increase of this limit by \$250 million.) The State previously issued the 2010 Bonds in the aggregate principal amount of \$80,000,000 pursuant to the Act and subject to the \$195 million limit. The 2012 Bonds are the second issue of bonds pursuant to the Act and subject to the \$195 million limit. The Act also authorizes the issuance of up to \$45 million aggregate principal amount of bonds for the replacement and repair of the Memorial Bridge and Sarah Mildred Long Bridge in Portsmouth, New Hampshire. No bonds subject to the \$45 million authorization have been issued and the State has no current plans to issue any bonds for this purpose.

The Act provides that bonds issued thereunder shall not be general obligations of the State for which its full faith and credit is pledged, nor shall they be payable out of any funds other than such funds as are specified in the Act, nor shall they be deemed debt of the State in determining its borrowing capacity under any applicable law. The Act further provides that any debt service fund, construction fund, debt service reserve fund, or other fund established in connection with the issuance of bonds under the Act is to be kept separate from other moneys of the State.

Under the terms of the Act, the State pledges to and agrees with the Bondholders that until such Bonds, together with interest thereon, with interest on any unpaid installment of interest and all costs and expenses in connection with any action or proceedings by or on behalf of such holders, are fully met and discharged, or unless expressly permitted or otherwise authorized by the terms of each contract and agreement made or entered into by or on behalf of the State with or for the benefit of such holders, the State (a) will carry out and perform, or cause to be carried out and performed, each and every promise, covenant, or contract made or entered into by the State or on its behalf to be performed and (b) will not issue any bonds, notes, or other evidences or indebtedness, other than federal highway grant anticipation bonds, having any rights secured by any pledge of or of any other lien or charge on the revenues or any monies or securities paid or to be paid to or held or to be held by the State or the State Treasurer under the Act and shall not create or cause to be created any lien or charge on the revenues or any such monies or securities, other than a lien or pledge thereon created by or pursuant to the provisions of the Act. See *Summary of Certain Provisions of the Trust Agreement*. Nothing in the Act, however, prevents the State from issuing evidences of indebtedness which (1) are secured by a pledge or lien that is expressly subordinate and junior in all respects to every lien and pledge created by or pursuant to the provisions of the Act or (2) pledge the full faith and credit of the State and which are not expressly secured by any specific lien or charge on revenues or any such money or securities

or (3) are secured by a pledge of or lien on monies or funds to be derived on and after such date as every pledge or lien thereon created by or pursuant to the provisions of the Act is discharged and satisfied.

## **Department of Transportation**

The New Hampshire Department of Transportation is administered by a Commissioner, an Assistant Commissioner and a Deputy Commissioner. The Commissioner, the Assistant Commissioner and the Deputy Commissioner are appointed by the Governor and are confirmed by the Governor and the Council for four-year terms. The Commissioner of the Department has overall responsibility for the general supervision, control and direction on behalf of the Department over all matters pertaining to location, alteration, construction, reconstruction and maintenance of the State's 4,559 miles of State highways and 2,138 bridges, including the New Hampshire turnpike system.

The following individuals are the principal administrators of the Department and the Ten Year Plan:

*Christopher D. Clement, Sr.*, Commissioner of the Department of Transportation. Mr. Clement took office on September 14, 2011 as Commissioner of the New Hampshire Department of Transportation. Mr. Clement has extensive leadership experience in both the private and public sectors.

Mr. Clement served as Deputy Commissioner and Chief Operating Officer of the New Hampshire Department of Transportation from July 2008 to February 2010. Prior to becoming the Commissioner, Mr. Clement was the Director of the Governor's Office of Economic Stimulus.

Mr. Clement has extensive experience in the creation and implementation of strategic approaches to business processes, working with cross-functional work teams, and the development of strategic initiatives and meaningful performance measures. His private sector experience includes 19 years with Goss International, Inc. of Dover, New Hampshire, where he began as a Design Engineer and rose to the position of Director of Global Commercial Web Product Management.

A New Hampshire native, Mr. Clement earned a Bachelor's Degree in Mechanical Engineering Technology from the University of New Hampshire, and a Master's Degree of Business Administration from the New Hampshire College Graduate School of Business.

*David J. Brillhart, P.E.*, Assistant Commissioner of the Department of Transportation. The Assistant Commissioner serves as Chief Engineer for the Department of Transportation. Mr. Brillhart graduated from the University of New Hampshire with a B.S. degree in Civil Engineering (1978). He has been employed by the Department of Transportation since 1978 and performed various functions in the Bureaus of Bridge Design and Highway Design. He served as Assistant Director of Project Development and was appointed to Director in 2002. He was appointed Assistant Commissioner in 2004.

*Michael P. Pillsbury, P.E.*, Deputy Commissioner for the Department of Transportation. Mr. Pillsbury has over 30 years of experience in the field of construction and engineering management. He is responsible for strategic planning and development of financial, administrative and human capital programs, policy development and is the Department's liaison with the Department of Information Technology. Mr. Pillsbury is a graduate of the University of New Hampshire with a B.S. degree in Civil Engineering and is a licensed professional engineer in New Hampshire.

*William J. Cass, P.E.*, Director of Project Development, Department of Transportation. This Division is responsible for the planning, design, and construction of highway and bridge projects, including the Turnpike System Capital Improvement Program. Mr. Cass was appointed to his current position in 2007. Prior to that he served as the Assistant Director of Project Development for three years. He is Project Director, formerly Project Manager, for the I-93 reconstruction and widening project from Salem to Manchester, and has been involved with the project throughout its development. He has 25 years of experience in various design and management capacities for the Department of Transportation. He has a B.S. degree in Civil Engineering from the University of New Hampshire (1985).

*Peter E. Stamnas, P.E.*, Project Manager, Department of Transportation. Mr. Stamnas is responsible for managing all aspects of the I-93 Salem to Manchester project for the Department. Mr. Stamnas began his career with the Department in its Bureau of Bridge Design in 1986 and spent 20 years in the in-house design section before being promoted to project manager in 2006. Mr. Stamnas has a B.S. degree in Civil Engineering from the University of New Hampshire (1986) and is a licensed professional engineer in New Hampshire.

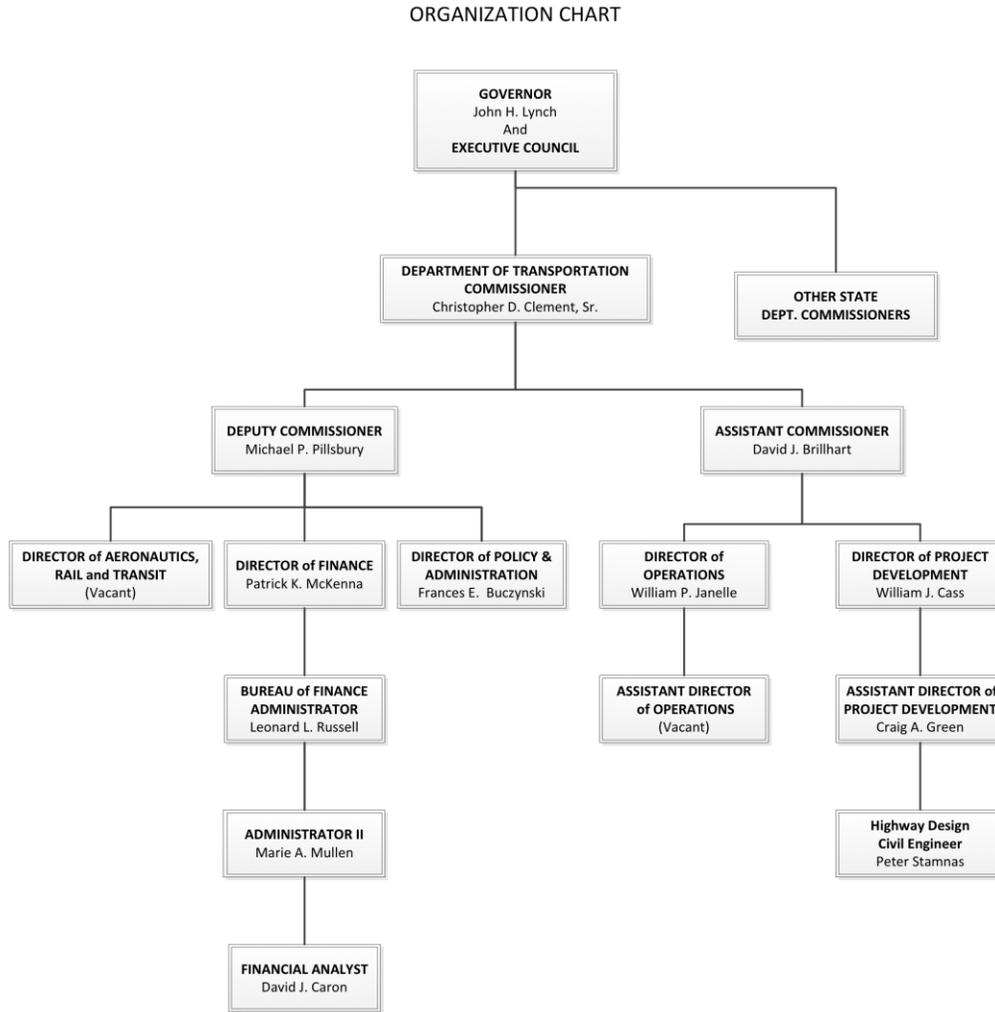
*Patrick K. McKenna*, Director of Finance, Department of Transportation. Mr. McKenna took office on November 17, 2010 as Director of Finance for the New Hampshire Department of Transportation. Mr. McKenna has held several leadership positions in the public, private and non-profit sectors, including, most recently, as the Chief Financial Officer of a statewide non-profit, and prior to that as the Chief Financial Officer of the United States Senate in Washington, D.C. Mr. McKenna has a B.S. degree in Finance from Bentley University in Waltham, Massachusetts, and a M.S. in Management and Finance from the University of Maryland University College in College Park, Maryland.

*Leonard L. Russell, CPA*, Finance Administrator of the Department of Transportation. The Administrator directs and supervises the operations of the Division of Finance. Mr. Russell graduated from Southern New Hampshire University with a B.S. degree in Accounting and maintains a current license with the State as a certified public accountant. He has been employed by the Department of Transportation since 2006 and has twenty years experience with the State in budget, accounting, policy and procedures.

*Marie A. Mullen*, Administrator II, Financial Reporting and Analysis for the Department of Transportation. Ms. Mullen joined the Finance and Contracts Bureau in September 2009 as a Financial Analyst and was recently promoted to her current position. Prior to joining the Department of Transportation, she worked in various analytic and supervisory roles for high-tech, manufacturing and insurance companies within New Hampshire. Ms. Mullen graduated from Assumption College with a Bachelor of Arts degree in Accounting and later earned a Master's Degree of Business Administration from the University of New Hampshire.

*David J. Caron*, Financial Analyst. Mr. Caron joined the Finance and Contracts Bureau in April 2011. He has more than four years of experience with the Department of Transportation, having served as the Chief Right of Way Agent from 2007 to 2011. Prior to joining the Department of Transportation, he worked as a Senior Tax Analyst for a major Investment Firm for more than nine years. Mr. Caron graduated from Southern New Hampshire University with a B.S. degree in Business Administration (1993) and later earned a M.S. degree in Finance (1997) and a Graduate Certificate in Taxation (2004).

The following chart shows the organization of State government relating to the Department.



The Department comprises four Divisions (Operations, Project Development, Finance, and Aeronautics, Rail and Transit) as described below.

**Operations**

The Division of Operations maintains and supervises the State’s transportation network including the State’s turnpike system. These efforts include: signs, traffic signals, pavement markings, snow removal, pavement resurfacing and staffing of New Hampshire Traffic Management Center. In addition, Operations is responsible for the maintenance of the Department’s vehicle and equipment fleet.

**Project Development**

The Division of Project Development is responsible for transportation engineering including planning, design, right of way acquisition, materials research and testing, and construction administration of all transportation projects. The Division is responsible for assuring that all highway projects and programs identified by the office of

the Commissioner of the Department are implemented, and for maintaining a coordinated management effort in carrying out the State's highway transportation programs, including the Ten Year Plan.

### **Finance**

The Division of Finance is responsible for all departmental accounting, purchasing and budget control, property, contracts and grants management, data processing, assistance with departmental planning, inventory control, printing and issuance of permits, registrations and licenses.

### **Aeronautics, Rail and Transit**

The Division of Aeronautics, Rail and Transit has responsibilities involving several of the State's various modes of transportation, including aviation, rail, transit, bicycle, and pedestrian.

The Division bureaus have many similar functions, including statewide responsibility for federal and/or State aid for airports, railroad, public/mass transportation programs, and regulatory and safety inspection programs.

In addition to planning functions, the Division provides input and guidance to the many providers and users of the State's inter-modal transportation system.

### **Ten-Year Plan**

New Hampshire RSA 228:99 and RSA 240 require that the Department propose a plan for improvements to the State's transportation system every two years. The purpose of the Ten-Year Plan is to develop and implement a plan allowing the State to fully participate in federally supported transportation improvement projects as well as to outline projects and programs funded with State transportation dollars. The current Ten-Year Plan was signed into law by the Governor John Lynch on June 28, 2010. The current Ten-Year Plan and the Department's Draft Ten Year Transportation Improvement Plan (2013 – 2022) dated January 13, 2012 are available at <http://www.nh.gov/dot/org/projectdevelopment/planning/typ/index.htm>. The State legislature has reviewed the State's ten-year transportation plan (H.B. 1716), which is adopted by the General Court and signed into law by the Governor every two years. H.B. 1716, as amended, was passed by the New Hampshire Senate on April 18, 2012 and by the New Hampshire House on May 9, 2012. H.B. 1716, as amended, increases the aggregate Federal Highway Grant Anticipation Bond authorization by \$250 million which is equal to the estimated amount required to complete the currently unfunded remaining capacity improvements on the I-93 Project. The amendment provides, in part, that issuing of bonds shall be contingent upon the availability of sufficient anticipated federal aid over the term of the bonds. H.B. 1716 is currently on its way to the Governor for consideration. The State cannot now predict whether this legislation will become law.

## **INVESTMENT CONSIDERATIONS**

The State's ability to pay principal of and interest on the 2012 Bonds depends upon numerous factors, many of which are not subject to the control of the State. Described below are certain factors that could affect the ability of the State to pay debt service on the 2012 Bonds.

### **Limited Obligations**

The Bonds are limited obligations of the State, payable solely from the Pledged Funds, consisting primarily of Federal Highway Funds. The Owners of the Bonds may not look to any general or other fund of the State for payment of principal of or interest on, the Bonds. See *Security for the Bonds* and *Appendix A – Summary of Certain Provisions of the Trust Agreement* for a further discussion of limitations as to the sources for payment of the Bonds.

### **Factors Affecting Federal Highway Funds**

The Bonds are payable solely from Pledged Funds. Pledged Funds include (i) Federal Highway Funds received by the State and any other moneys deposited to or held for the credit of the Federal Highway Grant

Anticipation Bond Trust Fund established under the Act, (ii) all moneys and securities 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 and (iii) any amounts payable to the State by a Hedge Provider pursuant to a Qualified Hedge Agreement. Federal Highway Funds, the primary source of repayment for the Bonds, consist of federal highway construction reimbursements and any other federal highway assistance received from time to time by the State with respect to the Federal Highway Construction Program under or in accordance with Title 23 or any successor program established under federal law.

The Federal Highway Funds have historically been authorized by Congress under multiple-year authorizing legislation. Congress passed H.R. 3, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (“SAFETEA-LU”), on July 29, 2005 and it was signed into law by the President on August 10, 2005. SAFETEA-LU replaced the previous six-year authorizing legislation, the Transportation Equity Act for the 21st Century, as amended (“TEA-21”), which expired on September 30, 2003. SAFETEA-LU has been extended beyond its original expiration date of September 30, 2009 until June 30, 2012.

SAFETEA-LU includes certain provisions designed to provide continuity in the flow of Federal Highway Funds to the states, including the State. There can be no assurance that such provisions will be continued under any future federal reauthorization or that, if continued, such provisions will be sufficient to ensure that Federal Highway Funds will be available as needed if in the future Congress amends existing laws or fails to reauthorize expired transportation legislation, or if future legislation or federal administrative action reduces the amount of Federal Highway Funds available to the Department. See *Information Concerning the Funding of Federal-Aid Highways – SAFETEA-LU* herein.

There can be no assurance that there will not be future changes in law, regulation, policy, or the availability of revenues at the federal level which may materially adversely affect the future availability of Federal Highway Funds to pay debt service on the 2012 Bonds. See *Information Concerning the Funding of Federal-Aid Highways*.

## **Default and Remedies**

The Trust Agreement sets forth the Events of Default relating to the Bonds, which include failure to pay debt service when due or failure to perform the covenants, agreements and conditions contained in the Trust Agreement.

Under the Trust Agreement, the State has covenanted that, upon the occurrence of any Event of Default (which Event of Default has not been remedied), and upon demand by the Trustee, it shall pay over to the Trustee, to the extent permitted by law, all Pledged Funds not otherwise held by the Trustee under the Trust Agreement. The Trust Agreement provides that upon the occurrence of an Event of Default, the Trustee may proceed either at law or in equity to protect and enforce the rights of the owners of the Bonds under the terms of the Trust Agreement or the laws of the State. The Trust Agreement also provides that the owners of a majority in aggregate principal amount of the Bonds then outstanding may direct the time, method and place of any proceeding for any remedy available to the Trustee, unless the Trustee determines that such direction would subject it to personal liability or be unjustly prejudicial to the Bondholders not parties to such direction.

The Trust Agreement provides that neither the Trustee nor the Bondholders shall have any right to accelerate the principal of or interest on the Bonds.

If an Event of Default has occurred, no owner of a Bond shall have any right to institute any suit, action or proceeding in equity or at law to exercise any remedy or otherwise take action to enforce the terms of the Trust Agreement unless the owners of at least 25% in aggregate principal amount of the Bonds then outstanding have filed a written request with the Trustee, and offered it reasonable opportunity to exercise powers granted in of the Trust Agreement in its own name, and have afforded the Trustee adequate security or indemnity against the Trustee’s costs, expenses and liabilities, and the Trustee shall have refused to comply with such request within a reasonable time.

For a more complete description of the remedies available to the owners of the Bonds, See *Appendix A – Summary of Certain Provisions of the Trust Agreement – Events of Default*.

The remedies available to the Bondholders upon the occurrence of an Event of Default are limited and are in many respects dependent upon judicial actions which are often subject to discretion and delay.

### **Forward-Looking Statements**

The Official Statement contains statements relating to future results that are forward-looking statements. When used in this Official Statement, the words “expects,” “forecasts,” “projects,” “intends,” “anticipates,” “estimates” and analogous expressions are intended to identify forward-looking statements. Such statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated in such forward-looking statements. Any forecast is subject to such uncertainties. Inevitably, some assumptions used to develop the forecasts will not be realized and unanticipated events and circumstances may occur. Therefore, there are likely to be differences between forecasts and actual results, and those differences may be material.

### **UNDERWRITING**

The Underwriters have agreed, subject to certain conditions, to purchase from the State the 2012 Bonds at a purchase price of \$114,767,235.28 (reflecting original issue premium of \$16,745,244.60 and an Underwriters’ discount of \$228,009.32), and to reoffer the 2012 Bonds at prices no greater than or yields no lower than the initial public offering prices or yields thereof set forth on the inside cover page hereof.

The 2012 Bonds may be offered and sold to certain dealers and others (including the Underwriters and other dealers depositing the 2012 Bonds into investment trusts or mutual funds) at prices lower or yields higher than such public offering prices or yields, and such prices or yields may be changed from time to time by the Underwriters. The Underwriters will be obligated to purchase all 2012 Bonds if any such 2012 Bonds are purchased.

Pershing LLC, a subsidiary of The Bank of New York Mellon Corporation, and Barclays Capital Inc. established a strategic alliance in May of 2009, which enables Pershing LLC to participate as a selling group member and a retail distributor for all new issue municipal bond offerings underwritten by Barclays Capital Inc., including the 2012 Bonds offered hereby. Pershing LLC will receive a selling concession from Barclays Capital Inc. in connection with its distribution activities relating to the 2012 Bonds.

Citigroup Inc., parent company of Citigroup Global Markets Inc., an underwriter of the 2012 Bonds, has entered into a retail brokerage joint venture with Morgan Stanley. As part of the joint venture, Citigroup Global Markets Inc. 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, Citigroup Global Markets Inc. will compensate Morgan Stanley Smith Barney LLC for its selling efforts with respect to the 2012 Bonds.

J.P. Morgan Securities LLC (“JPMS”), one of the Underwriters of the 2012 Bonds, 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 (if applicable to this transaction), each of UBSFS and CS&Co. may purchase 2012 Bonds from JPMS at the original issue price less a negotiated portion of the selling concession applicable to any 2012 Bonds that such firm sells.

### **TAX EXEMPTION**

In the opinion of Edwards Wildman Palmer LLP, Bond Counsel to the State (“Bond Counsel”), based upon an analysis of existing laws, regulations, rulings, and court decisions, and assuming, among other matters, compliance with certain covenants, interest on the 2012 Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the “Code”). Bond Counsel is of the further opinion that interest on the 2012 Bonds is not a specific preference item for purposes of the federal individual or

corporate alternative minimum taxes, although Bond Counsel observes that such interest is included in adjusted current earnings when calculating corporate alternative minimum taxable income. Bond Counsel expresses no opinion regarding any other federal tax consequences arising with respect to the ownership or disposition of, or the accrual or receipt of interest on, the 2012 Bonds.

The Code imposes various requirements relating to the exclusion from gross income for federal income tax purposes of interest on obligations such as the 2012 Bonds. Failure to comply with these requirements may result in interest on the 2012 Bonds being included in gross income for federal income tax purposes, possibly from the date of original issuance of the 2012 Bonds. The State has covenanted to comply with such requirements to ensure that interest on the 2012 Bonds will not be included in federal gross income. The opinion of Bond Counsel assumes compliance with these requirements.

Bond Counsel is also of the opinion that, under existing law, interest on the 2012 Bonds is exempt from the New Hampshire personal income tax on interest and dividends. Bond Counsel expresses no opinion on any other New Hampshire tax consequences arising with respect to the 2012 Bonds. Bond Counsel has not opined as to the taxability of the 2012 Bonds or the income therefrom under the laws of any state other than New Hampshire. A complete copy of the proposed form of opinion of Bond Counsel is set forth in Appendix C hereto.

To the extent the issue price of any maturity of the 2012 Bonds is less than the amount to be paid at maturity of such Bonds (excluding amounts stated to be interest and payable at least annually over the term of such Bonds), the difference constitutes "original issue discount," the accrual of which, to the extent properly allocable to each owner thereof, is treated as interest on the 2012 Bonds which is excluded from gross income for federal income tax purposes and is exempt from the New Hampshire personal income tax on interest and dividends. For this purpose, the issue price of a particular maturity of the 2012 Bonds is the first price at which a substantial amount of such maturity of the 2012 Bonds is sold to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers). The original issue discount with respect to any maturity of the 2012 Bonds accrues daily over the term to maturity of such Bonds on the basis of a constant interest rate compounded semiannually (with straight-line interpolations between compounding dates). The accruing original issue discount is added to the adjusted basis of such Bonds to determine taxable gain or loss upon disposition (including sale, redemption, or payment on maturity) of such Bonds. Bondholders should consult their own tax advisors with respect to the tax consequences of ownership of 2012 Bonds with original issue discount, including the treatment of purchasers who do not purchase such Bonds in the original offering to the public at the first price at which a substantial amount of such Bonds is sold to the public.

2012 Bonds purchased, whether at original issuance or otherwise, for an amount greater than the stated principal amount to be paid at maturity of such Bonds, or, in some cases, at the earlier redemption date of such Bonds ("Premium Bonds"), will be treated as having amortizable bond premium for federal income tax purposes and for purposes of the New Hampshire personal income tax on interest and dividends. No deduction is allowable for the amortizable bond premium in the case of obligations, such as the Premium Bonds, the interest on which is excluded from gross income for federal income tax purposes. However, a Bondholder's basis in a Premium Bond will be reduced by the amount of amortizable bond premium properly allocable to such Bondholder. Owners of Premium Bonds should consult their own tax advisors with respect to the proper treatment of amortizable bond premium in their particular circumstances. Bond Counsel has not undertaken to determine (or to inform any person) whether any actions taken (or not taken) or events occurring (or not occurring) after the date of issuance of the 2012 Bonds may adversely affect the value of, or the tax status of interest on, the 2012 Bonds.

Prospective Bondholders should be aware that from time to time legislation is or may be proposed which, if enacted into law, could result in interest on the 2012 Bonds being subject directly or indirectly to federal income taxation, or otherwise prevent Bondholders from realizing the full benefit provided under current federal tax law of the exclusion of interest on the 2012 Bonds from gross income. To date, no such legislation has been enacted into law. However, it is not possible to predict whether any such legislation will be enacted into law. Further, no assurance can be given that any pending or future legislation, including amendments to the Code, if enacted into law, or any proposed legislation, including amendments to the Code, or any future judicial, regulatory or administrative interpretation or development with respect to existing law, will not adversely affect the market value and marketability of, or the tax status of interest on, the 2012 Bonds. Prospective Bondholders are urged to consult their own tax advisors with respect to any such legislation, interpretation or development.

Although Bond Counsel is of the opinion that interest on the 2012 Bonds is excluded from gross income for federal income tax purposes and is exempt from the New Hampshire personal income tax on interest and dividends, the ownership or disposition of, or the accrual or receipt of interest on, the 2012 Bonds may otherwise affect a Bondholder's federal or state tax liability. The nature and extent of these other tax consequences will depend upon the particular tax status of the Bondholder or the Bondholder's other items of income, deduction, or exclusion. Except as indicated in the following paragraph, Bond Counsel expresses no opinion regarding any such other tax consequences, and Bondholders should consult with their own tax advisors with respect to such consequences.

### **LITIGATION**

There is no controversy or litigation of any nature, now pending or threatened, seeking to restrain or enjoin the issuance, sale, execution or delivery of the 2012 Bonds, or in any way questioning the validity of the Act or contesting or affecting the validity of the 2012 Bonds or any proceedings of the State taken with respect to the issuance or sale thereof, or the pledge or application of any moneys or security provided for the payment of the 2012 Bonds.

### **RATINGS**

Moody's Investors Services, Inc. has assigned their municipal bonds rating of "Aa2" with a "stable" outlook to the 2012 Bonds. Standard & Poor's Ratings Services has assigned their municipal bonds rating of "AA" with a "stable" outlook to the 2012 Bonds.

Each such rating reflects only the views of the respective rating agency, and an explanation of the significance of such rating should be obtained from such rating agency, at the following addresses: Moody's Investors Service, 7 World Trade Center at 250 Greenwich St., New York, New York 10007; and Standard & Poor's Ratings Services, 55 Water Street, New York, New York 10041. Generally, a rating agency bases its rating on the information and materials furnished to it and on investigations, studies and assumptions of its own. The above ratings are not recommendations to buy, sell or hold the 2012 Bonds. There is no assurance such ratings will continue for any given period of time or that such ratings will not be revised downward or withdrawn entirely by the rating agencies, if in the judgment of such rating agencies, circumstances so warrant. Any such downward revision or withdrawal of such ratings may have an adverse effect on the market price of the 2012 Bonds.

### **FINANCIAL ADVISOR**

Public Resources Advisory Group, New York, New York, is serving as Financial Advisor in connection with the issuance of the 2012 Bonds. The Financial Advisor is an independent advisory firm and is not engaged in the business of underwriting, trading, or distributing municipal securities or other public securities. The Financial Advisor is not obligated to undertake to make an independent verification of, or to assume responsibility for the accuracy, completeness or fairness of the information contained in the Official Statement.

### **LEGALITY FOR INVESTMENT**

Under the laws of the State, the 2012 Bonds are authorized investments for fiduciaries and may be legally deposited as security for public funds in the State.

### **CONTINUING DISCLOSURE**

The State has covenanted for the benefit of the holders of the 2012 Bonds to provide certain financial information and operating data relating to the FAHP and the I-93 Project by not later than 270 days following the end of each Fiscal Year during which the 2012 Bonds are outstanding (the "Annual Report"), and to provide notices of certain enumerated events. The Annual Report and notices of events will be filed on behalf of the State with the Municipal Securities Rulemaking Board (the "MSRB"). The specific nature of the information to be contained in the Annual Report or the notices of events is summarized in *Appendix B - Form of Continuing Disclosure Certificate*.

It should be noted that the State had undertaken pursuant to the Rule with respect to its general obligation bonds to provide its financial statements for fiscal year 2006 to each repository established in accordance with the Rule by March 27, 2007, and on March 29, 2007, the State filed a notice of its failure to file such statements by the required date. The State's audited financial statements for fiscal year 2006 were filed on April 20, 2007.

It should be further noted that the State had undertaken pursuant to the Rule with respect to its general obligation bonds to provide its financial statements for fiscal year 2010 to the MSRB by March 27, 2011, and on March 28, 2011 the State filed its audited financial statements and a notice of its failure to file such statements by the required date.

### **LEGAL MATTERS**

Legal matters incident to the authorization and sale of the 2012 Bonds are subject to the approval of Edwards Wildman Palmer LLP, Boston, Massachusetts, Bond Counsel, whose opinions will be dated the date of the issuance of the 2012 Bonds and will speak only as of that date. The proposed form of the approving opinion of Edwards Wildman Palmer LLP is set forth in Appendix C hereto. Certain legal matters will be passed upon for the Underwriters by their counsel, Preti, Flaherty, Beliveau & Pachios, LLP, Concord, New Hampshire.

### **MISCELLANEOUS**

The financial data and other information contained herein have been obtained from the State's records and other sources which are believed to be reliable. However, no assurance can be given that any of the assumptions or estimates contained herein will be realized.

Neither this Official Statement nor any advertisement of the 2012 Bonds is to be construed as a contract with the owners of the 2012 Bonds. Any statements made in this Official Statement involving matters of opinion or of estimates, whether or not expressly so identified, are intended merely as such and not as representations of fact.

Additional information concerning the State or the Department may be obtained upon written request to the Office of the State Treasurer, State House Annex, Concord, New Hampshire 03301, or by calling (603) 271-2621.

STATE OF NEW HAMPSHIRE

By: /s/ Catherine A. Provencher  
State Treasurer

Dated: May 16, 2012

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

The Trust Agreement contains terms and conditions relating to the issuance and sale of Federal Highway Grant Anticipation Bonds under it, including various covenants and security provisions, certain of which are summarized below. For purposes of this summary, all references to “Bonds” shall refer to the Federal Highway Grant Anticipation Bonds including the 2010 Bonds and the 2012 Bonds. 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 Edwards Wildman Palmer LLP, 111 Huntington Avenue, Boston, Massachusetts 02199, Attention: Walter J. St. Onge, III, Bond Counsel to the State.

**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.

“Act” shall mean the provisions of New Hampshire RSA 228-A, as in effect as of the date of the Trust Agreement and as thereafter amended from time to time.

“Accreted Value” shall mean with respect to any Bonds that are Capital Appreciation Bonds, an amount equal to the principal amount of such Capital Appreciation Bonds (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 Bonds 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 Bonds 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 Bonds” shall mean Bonds of the State issued pursuant to Section 206 of the Trust Agreement.

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

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

- (i) With respect to Variable Rate Bonds, the aggregate Bond 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 State (1) enters into a Qualified Hedge Agreement with a Hedge Provider requiring the State 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 Bonds 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 Bonds shall be determined as if such Bonds bore interest at the fixed interest rate or maximum

interest rate, as the case may be, payable by the State under such Qualified Hedge Agreement;

- (ii) with respect to Fixed Rate Bonds, if the State (1) enters into a Qualified Hedge Agreement with a Hedge Provider requiring the State 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 Bonds 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 Bonds shall be determined as if such Bonds bore interest at the Assumed Hedge Rate;
- (iii) with respect to Tender Bonds, the aggregate Bond Debt Service Requirement thereon shall not include amounts payable upon mandatory or optional tender, but shall be deemed to include all periodic Bond 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 Bond Related Costs and other payments are required to be made pursuant to such Reimbursement Obligation due to such provider advancing funds and only to the extent provided in the Applicable Supplemental Trust Agreement;
- (iv) with respect to Build America Bonds and the Recovery Zone Economic Development Bonds, if any, the aggregate Bond Debt Service Requirements thereon shall be reduced by an amount equal to any subsidy payments expected to be received during the applicable period by the State from the federal government with respect to a portion of the interest payable on such Build America Bonds and Recovery Zone Economic Development Bonds; and
- (v) with respect to Bonds that have Credit Enhancement, the aggregate Bond Debt Service Requirement thereon shall be deemed to include all periodic Bond 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 Bond Related Costs and other payments are required to be made pursuant to such Reimbursement Obligation due to such provider advancing funds.

“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 specified in the irrevocable notice referred to in subclause (i) above, as appropriate.

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

“Appreciated Value” shall mean with respect to Bonds that are Deferred Income Bonds until the Interest Commencement Date thereon, an amount equal to the principal amount of such Deferred Income Bond (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 Bond 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 Bonds that are Deferred Income Bonds 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.

“Assumed Hedge Rate” shall have the meaning given such term under the heading “Qualified Hedge Agreements” below.

“Assumed Rate” shall mean, with respect to any Variable Rate Bonds, 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.

“Balloon Indebtedness” means any Bonds 25% or more of the principal payments of which are due in a single Federal Fiscal Year, which portion of the principal is not required by the Applicable Supplemental Trust Agreement authorizing the issuance of such Bonds to be amortized by payment or redemption prior to such Federal Fiscal Year.

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

“Bond 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 State or the registered owner of any Bonds on all Bonds 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 Bonds and the Appreciated Value of Deferred Income Bonds 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 Bonds or Deferred Income Bonds.

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

“Bond Payment Date” shall mean each date on which Bond Payments are due, or set forth in each Applicable Supplemental Trust Agreement.

“Bond Payments” shall mean (a) with respect to any Bond, other than a Capital Appreciation Bond or Deferred Income Bond, the interest due on such Bond on each Interest Payment Date and the principal, redemption premium, if any, and interest due on such Bond at maturity or on any redemption date; (b) with respect to a Capital Appreciation Bond or Deferred Income Bond, the Accreted Value or Appreciated Value, respectively, due on such Bond at maturity; and (c) any amounts payable to the provider of a Credit Facility or a Qualified Hedge Agreement that are treated as Bond Payments pursuant to clause (iii) below.

For purposes of this definition:

- (i) Bond Payments due on any Interest Payment Date that are payable from accrued interest or capitalized interest held in the Debt Service Fund pursuant to an

Applicable Supplemental Trust Agreement will be excluded in determining the amount of Bond Payments due in the Federal Fiscal Year in which such Interest Payment Date occurs for purposes of determining the amount of Federal Highway Funds for which Federal Aid Agreements are to be in force and effect.

- (ii) If any Bonds bear interest at an adjustable or variable interest rate such that the Bond Payments due in a Federal Fiscal Year or on a Bond Payment Date cannot be determined with certainty on the date on which Federal Highway Funds are to be paid to the Trustee, the amount of interest included in the Bond Payments due on such Bonds in such Federal Fiscal Year or on such Bond Payment Date shall be based on the interest rate estimated by the State, or as stated in any Applicable Supplemental Trust Agreement relating thereto.
- (iii) If the State purchases or arranges for a Credit Facility or a Qualified Hedge Agreement with respect to any Bonds, (A) moneys paid to the provider of the Credit Facility to reimburse the provider for moneys paid by the provider that are used to make Bond Payments (as defined in the first two sentences of this definition) and (B) moneys paid to the provider of the Qualified Hedge Exchange Agreement may, if and to the extent provided in an Applicable Supplemental Trust Agreement or in a separate agreement between the State and the Credit Facility or Qualified Hedge Agreement provider entered into, be treated as Bond Payments on the Bonds to which the Credit Facility or Qualified Hedge Agreement relates.
- (iv) With respect to Balloon Indebtedness, there shall be excluded from Bond Payments due in any period any principal installment of Balloon Indebtedness due in such period, whether at maturity or pursuant to mandatory redemption, if the State has designated prior to the payment or redemption date available and unrestricted funds for such payment or redemption or has received a binding commitment from a recognized financial institution to refinance such principal on reasonable terms.

“Bond Related Costs” shall mean all costs, fees and expenses of the State incurred or related to any Liquidity Facility, Credit Enhancement, 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 State in connection with a Series, and any other fees, charges and expenses that may be lawfully incurred by the State to a provider of any Credit Enhancement or Liquidity Facility or 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 or Liquidity Facility and any interest on such repayment obligation unless any such amount constitutes a Bond Debt Service Requirement for such Series.

“Bond Related Costs Fund” shall mean the fund so designated and created by the Trust Agreement.

“Bonds” shall mean any of the Bonds of the State authenticated and delivered under the Trust Agreement, including the Initial Bonds and any Additional Bonds.

“Build America Bonds” shall have the meaning set forth in Section 54AA of the Code and Section 203(i) of the Trust Agreement.

“Business Day” shall mean any day (other than a Saturday or Sunday) on which banks located in the cities in which a principal office of the Trustee or the Paying Agent are located are not required or authorized to remain closed and on which the New York Stock Exchange is not closed.

“Capital Appreciation Bonds” shall mean any Bonds 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 Bond that is redeemed prior to maturity, and (ii) computing the principal amount of Capital Appreciation Bonds 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 Bond as of a specific date shall be deemed to be its Accreted Value as of such date.

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

“Costs of Issuance” shall mean all items of expense directly or indirectly payable or reimbursable by or to the State and related to the authorization, sale and issuance of Bonds, 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 Bonds, accrued interest payable upon the initial investment of the proceeds of Bonds, fees and expenses payable in connection with any Credit Enhancement or Liquidity 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 Bonds and any other cost, charge or fee payable in connection with the original issuance of Bonds.

“Conditional Redemption” shall mean, in the case of an optional redemption, notice of redemption that states (i) that it is conditioned upon the deposit of moneys, in an amount equal to the amount necessary to effect the redemption, with the Trustee no later than the date that is five (5) Business Days prior to the redemption date or (ii) that the State retains the right to rescind such notice on or prior to the redemption date.

“Council” shall mean the Executive Council of the State.

“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 Bonds.

“Debt Service Fund” shall mean the fund so designated and created by the Trust Agreement.

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

“Deferred Income Bonds” shall have the meaning given such term under the heading “Authorization of the Bonds” below.

“Department” shall mean the New Hampshire Department of Transportation.

“Discount Bonds” shall have the meaning given such term under the heading “Authorization of the Bonds” below.

“Federal Aid Agreements” shall mean all agreements between or among the State and/or the Department and FHWA with respect to Projects in accordance with the provisions of Title 23, including without limitation, the 2010 Memorandum of Agreement.

“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 State at any time prior to or after (so long as any Bonds remain Outstanding) the date of execution of the Trust Agreement as part of the State’s program of transportation development and improvements.

“Federal Highway Grant Anticipation Bond Trust Fund” shall mean the federal highway grant anticipation bond trust fund established by Section 10 of the Act.

“Federal Highway Funds” shall mean all federal highway construction reimbursements and any other federal highway assistance received by or on behalf of, or available to, the State from time to time 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.

“FHWA” shall mean the Federal Highway Administration or any successor agency.

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

“Fixed Rate Bonds” shall have the meaning given such term under the heading “Authorization of the Bonds” below.

“Government Obligations” shall mean (i) direct obligations of, or obligations the timely payment of principal and interest on which are unconditionally guaranteed by, the United States of America.

“Governor” shall mean the Governor of the State.

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

“I-93 Project” shall mean the I-93 Salem to Manchester Project as described in the 2010 Memorandum of Agreement.

“Immediate Notice” means notice transmitted by electronic means, in writing, by telecopier or other electronic means or by telephone (promptly confirmed in writing), and received by the party addressed.

“Initial Bonds” shall mean the Bonds authorized by Section 205 of the Trust Agreement.

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

“Interest Payment Date” shall mean for each Series of Bonds, the date on which interest on the Bonds of such Series shall be payable as provided in the Applicable Supplemental Trust Agreement.

“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 Bonds.

“Maximum Annual Debt Service” shall mean the greatest Bond Debt Service Requirement (or, in the case of any calculation pursuant to Section 206(b)(iv) or Section 207(b)(iv) of the Trust Agreement, the Adjusted Bond Debt Service Requirement) during the current or any future Federal Fiscal Year commencing after the date of such calculation on all Outstanding Bonds. The method for determining Maximum Annual Debt Service for Variable Rate Bonds shall be set forth in the Applicable Supplemental Trust Agreement.

“2010 Memorandum of Agreement” shall mean the Memorandum of Agreement between Federal Highway Administration and New Hampshire Department of Transportation Accounting for Debt Service Reimbursements for the I-93 Salem to Manchester Project dated as of September 24, 2010, as amended from time to time.

“Notice of Redemption or Defeasance” shall have the meaning given such term under the heading “Application of Federal Highway Funds” below.

“Obligation Authority” shall mean the annual limitation on the amount of eligible costs under Title 23 of the United States Code that the State 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 Bonds, shall mean as of a particular date, all Bonds theretofore and thereupon being authenticated and delivered except (i) any Bond cancelled by the State or a Fiduciary at or before said date, (ii) any Bond in lieu of or in substitution for which another Bond shall have been authenticated and delivered pursuant to the Trust Agreement and (iii) Bonds deemed to have been paid as provided in the Trust Agreement.

“Paying Agent” shall mean any paying agent or co-paying agent for Bonds 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 State funds:

- (i) Government Obligations;
- (ii) direct obligations of, or obligations guaranteed as to timely payment of principal and interest by, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association 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 Bonds 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 Bonds 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 Bonds 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 Bonds 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 Bonds 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 Bonds 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 Bonds 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 Bonds Outstanding and (b) the State 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 State 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 State 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 State 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.

“Person” means a corporation, association, partnership, limited liability company, joint venture, trust, organization, business, individual or government or any governmental agency or political subdivision thereof.

“Pledged Funds” shall mean (i) Pledged Revenues, (ii) all moneys and securities, 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, and (iii) any amounts payable to the State by a Hedge Provider pursuant to a Qualified Hedge Agreement.

“Pledged Revenues” shall mean all eligible Federal Highway Funds received after the date of the Trust Agreement by the State and any other moneys deposited to or held for the credit of the Federal Highway Grant Anticipation Bond Trust Fund established pursuant to Section 10 of the Act (other than in the Project Fund) so long as any Bonds remain Outstanding and any rights to receive the same. Such term includes any funds paid by FHWA to the Trustee directly pursuant to the Trust Agreement or otherwise that would have been paid by FHWA to the State but for a specific agreement between the FHWA and the Department and/or the State to pay such moneys directly to the Trustee.

“Principal Installment” shall mean, as of any particular date of computation and with respect to Bonds of a particular Series, an amount of money equal to the aggregate of (i) the principal amount of Outstanding Bonds of said Series which mature on a single future date, reduced by the aggregate principal amount of such Outstanding Bonds 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 Bonds, plus (ii) the amount of any Sinking Fund Payment payable on said future date for the retirement of any Outstanding Bonds of said Series.

“Projects” shall mean the I-93 Project and any other project authorized to be financed under the Act by the issuance of Bonds, as described in an Applicable Supplemental Trust Agreement, and which is the subject of or described in a Federal Aid Agreement.

“Project Fund” shall mean the fund so designated and created by the Trust Agreement.

“Purchase Price” shall mean an amount equal to the principal amount of any Bonds purchased under the terms of the Applicable Supplemental Trust Agreement, plus accrued interest, if any.

“Qualified Hedge Agreement” shall mean an interest rate exchange or similar agreement between the State and a Hedge Provider relating to the Bonds 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 State, 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 Bonds Outstanding in one of the two highest Rating Categories of any such Rating Agency then maintaining a rating on the Bonds Outstanding but in no event lower than the Rating Category designated by such Rating Agency for the Bonds Outstanding subject to such hedge agreement or (ii) the State receives a Rating Confirmation with respect to entering into such agreement.

“Rating Agency” shall mean Moody’s Investors Service, Inc., Standard & Poor’s Ratings Group, Inc. 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 in the Trust Agreement or in an Applicable Supplemental Trust Agreement, shall be long term ratings.

“Rating Confirmation” means evidence that no Bond rating then in effect from a rating agency will be withdrawn or reduced solely as a result of an action to be taken under the Trust Agreement.

“Rebate Fund” shall mean the fund so designated and created by the Trust Agreement.

“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 Tax Exempt Bonds as the amount required to be maintained in the Rebate Fund with respect to such Bonds.

“Recovery Zone Economic Development Bonds” shall have the meaning set forth in Section 1400U-2 of the Code and Section 203(i) of the Trust Agreement.

“Redemption Fund” shall mean the fund so designated and created by the Trust Agreement.

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

“Refunding Bonds” shall mean any of the Bonds authorized by Section 207 of the Trust Agreement.

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

“Reimbursement Obligation” shall have the meaning given such term under the heading “Credit Enhancement Facilities” below.

“Securities Depository” shall mean a Person that is registered as a clearing agency under Section 17A of the Securities and Exchange Act of 1934 or whose business is confined to the performance of the functions of a clearing agency with respect to exempted securities, as defined in Section 3(a)(12) of such Act for the purposes of Section 17A thereof.

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

“SIFMA Index” means, on any date, a rate determined on the basis of the seven-day high grade market index of tax-exempt variable rate demand obligations, as produced by Municipal Market Data and published or made available by the Securities Industry & Financial Markets Association (formerly the Bond Market Association)(“SIFMA”) or any Person acting in cooperation with or under the sponsorship of SIFMA and acceptable to the Trustee and effective from such date.

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

“State” shall mean the State of New Hampshire.

“State 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 State.

“State Treasurer” shall mean the Treasurer of the State or any Deputy Treasurer of the State acting on the State Treasurer’s behalf.

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

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

“Tender Bonds” shall have the meaning given such term in Section 203(d) of the Trust Agreement.

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

“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 Bonds that are Capital Appreciation Bonds, the date or dates set forth in the Applicable Supplemental Trust Agreement on which specific Accreted Values are assigned to such Bonds and (ii) with respect to any Bonds that are Deferred Income Bonds, 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 Bonds.

“Variable Rate Bonds” shall have the meaning given such term under the heading “Authorization of the Bonds” below.

“Variable Rate Ceiling” shall have the meaning given such term under the heading “Authorization of the Bonds” below.

Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, words importing persons shall include firms, associations and corporations, and words of the masculine or feminine gender shall include correlative words of the masculine, feminine and neuter genders.

### **The Pledge**

There are pledged for the payment of principal and Redemption Price of and interest on the Bonds, (i) the Pledged Revenues, (ii) all moneys and securities, 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 and (iii) any amounts payable to the State by a Hedge Provider pursuant to a Qualified Hedge Agreement (collectively, the “Pledged Funds”). The Bonds shall be special obligations of the State payable solely from the sources described above and the full faith and credit of the State has not been pledged to the payment of the Bonds.

The State may in any Supplemental Trust Agreement pledge any Additional Pledged Funds or portions thereof which the State 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.

### **Trust Agreement to Constitute Contract**

The Trust Agreement constitutes a contract between the State and the registered owners from time to time of the Bonds, and the pledge made therein and the covenants and agreements therein set forth to be performed by or on behalf of the State shall be for the equal benefit, protection and security of the registered owners of any and all of the Bonds, 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 Bonds over any other thereof, except as otherwise expressly provided in or permitted by the Trust Agreement.

### **Authorization of the Bonds**

Subject to the approval of the Governor and Council, the State is authorized to issue one or more series of Bonds under the Trust Agreement to be designated “Federal Highway Grant Anticipation Bonds” and to bear such further designation as required by law or as determined by the State Treasurer, which Bonds may be issued as provided from time to time, without limitation as to amount except as provided in the Trust Agreement or as limited by law. The Bonds may, if and when authorized by one or more Supplemental Trust Agreements, be issued in one or more Series, and the designation thereof, may include such further appropriate designations added to or incorporate in such title for the Bonds of any particular Series as the State may determine. The Bonds may be issued as Fixed Rate Bonds, Variable Rate Bonds, Tender Bonds, Capital Appreciation Bonds, Deferred Income Bonds, Discount Bonds, Build America Bonds or Recovery Zone Economic Development Bonds or any combination thereof in accordance with applicable provisions set forth below and the Applicable Supplemental Trust Agreement.

The State may issue Bonds (“Fixed Rate Bonds”) 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 Bonds.

The State may issue Bonds (“Variable Rate Bonds”) 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 Bonds shall specify the maximum interest rate (the “Variable Rate Ceiling”) payable on such Bonds during the term thereof.

The State may provide that any Series of Bonds may include an option exercisable by the registered owners thereof to have such Bonds (“Tender Bonds”) either repurchased or redeemed prior to the maturity thereof. Any Tender Bonds issued under the Trust Agreement shall be secured by a Liquidity Facility providing for the repurchase or payment of any tender price of Tender Bonds which have not been remarketed upon tender of such

Bonds and any accrued and unpaid interest due on such Bonds 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 Bonds Outstanding.

The State may issue Bonds (“Capital Appreciation Bonds”) 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 State may issue Bonds (“Discount Bonds”) which either bear a zero stated rate of interest or bear a stated rate of interest such that such Bonds 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 State. The State may provide for the determination of the “principal amount” and “interest” payable on such Bonds.

The State may issue Bonds (“Deferred Income Bonds”) which provide for the deferral of interest on such Bonds until the Interest Commencement Date.

The State may issue Bonds (“Build America Bonds” or “Recovery Zone Economic Development Bonds”), as specified by the State at the time of issuance thereof) which provide for a subsidy payment to be received by the State from the federal government with respect to a portion of the interest payable on such Bonds.

### **Additional Bonds**

One or more Series of Additional Bonds may be issued for the purpose of (i) paying costs of a Project, including without limitation, additional costs of the I-93 Project, (ii) the making of deposits in the Debt Service Fund, (iii) the payment of the Costs of Issuance of such Bonds, or (iv) any combination of the foregoing.

Additional Bonds may be issued only upon notification by the Trustee that it has received, among other items, the following:

- (i) A Bond Counsel’s opinion to the effect that (a) the State has the right and power under the Act to enter into the Trust Agreement and the Applicable Supplemental Trust Agreement and each has been duly and lawfully executed on behalf of the State by the State Treasurer, the Trust Agreement and the Applicable Supplemental Trust Agreement are in full force and effect and are valid and binding upon the State and enforceable in accordance with their terms, and no other authorization for the Trust Agreement and the Applicable Supplemental Trust Agreement is required, (b) the Trust Agreement creates the valid pledge which it purports to create of the Pledged Funds in the manner and to the extent provided therein and the Applicable Supplemental Trust Agreement and (c) the Bonds of such Series are valid and binding special obligations of the State, enforceable in accordance with their terms and the terms of the Trust Agreement and entitled to the benefits of the Act and the Trust Agreement;
- (ii) A certificate of an Authorized Officer stating that, as of the delivery of such Additional Bonds and application of their proceeds, no Event of Default, as described in Section 701 of the Trust Agreement, will have happened and will then be continuing;
- (iii) A certificate of an Authorized Officer that demonstrates that the eligible Obligation Authority during the most recently completed Federal Fiscal Year was equal to at least three times (300%) of the Maximum Annual Debt Service on all Outstanding Bonds and on the Additional Bonds proposed to be issued excluding, in the case of Refunding Bonds, the debt service on the Bonds to be refunded thereby; and
- (iv) A certificate of an Authorized Officer stating that a Federal Aid Agreement has been entered into or supplemented to provide for FHWA reimbursement to cover the debt service on the Additional Bonds.

## **Refunding Bonds**

One or more Series of Refunding Bonds may be issued for the purpose of refunding all or any part of the Bonds of one or more Series Outstanding, but only upon receipt by the Trustee of, among other items, the following:

- (i) A Bond Counsel's opinion as described above under "Additional Bonds";
- (ii) A certificate of an Authorized Officer stating that, as of the delivery of such Refunding Bonds and application of their proceeds, no Event of Default as described in Section 701 of the Trust Agreement will have happened and will then be continuing;
- (iii) A certificate of an Authorized Officer to the effect that all Federal Aid Agreements with respect to Bonds that will be outstanding after the issuance of such Refunding Bonds have been amended to reflect the new debt service on such Refunding Bonds;
- (iv) An amount of money or Defeasance Obligations sufficient to effect payment at maturity or redemption of the Bonds to be refunded; and
- (v) So long as any Bonds related to the I-93 Project remain Outstanding, a certificate of an Authorized Officer stating that no event of default exists under the 2010 Memorandum of Agreement.

Notwithstanding any of the foregoing provisions, the State reserves the right to issue Refunding Bonds in order to refund any Bonds then Outstanding under the Trust Agreement, so long as the Maximum Annual Debt Service is not increased more than 10% as a result of issuing such Refunding Bonds.

## **Creation of liens; Other Indebtedness**

Except as otherwise expressly provided in the Trust Agreement, the State shall not issue any bonds, Bonds or other evidences of indebtedness, other than the Bonds, 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 State 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.

## **Credit Enhancement Facilities**

The State 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 Bonds or providing for the purchase of such Bonds or a portion thereof by the issuer of any such Credit Enhancement or Liquidity Facility. In connection therewith the State 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.

## **Qualified Hedge Agreements**

The State may from time to time enter into Qualified Hedge Agreements with a Hedge Provider with respect to all or a portion of the Bonds of any Series Outstanding. The obligations of the State 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 Bonds Outstanding. The State Treasurer shall provide the Trustee and each Rating Agency then maintaining a rating on any Bonds Outstanding with at least thirty (30) days prior written notice of its intention to enter into a Qualified Hedge Agreement.

Any amounts paid to the State pursuant to a Qualified Hedge Agreement shall be deposited by the State Treasurer in the Debt Service Fund. Any amounts payable by the State to a Hedge Provider 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 Additional Bonds or Refunding Bonds, 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 Bonds which will remain Outstanding under which the State is required to pay a variable interest rate on such notional amount.

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

The following funds and accounts shall be established and shall be held by the Trustee:

- (i) Redemption Fund;
- (ii) Debt Service Fund;
  - (A) Series Accounts; and
  - (B) Defeasance Account
- (iii) Bond Related Costs Fund; and
- (iv) Rebate Fund.

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

The State Treasurer shall establish the Project Fund to be maintained as part of the Federal Highway Grant Anticipation Bond Trust Fund and to be held by the State Treasurer so long as Bonds 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 and to pay costs of the Project financed by such Series.

Such amounts shall be applied by the State Treasurer to the payment of the Costs of Issuance of the related Series of Bonds, to the extent authorized by an Applicable Supplemental Trust Agreement and otherwise authorized by law and to pay the costs of the Project for which such Bonds have been issued. The State Treasurer may allocate such amounts held to pay the costs of such Project in accordance with the provisions thereof and the provisions of applicable law. Investment earnings received by the State Treasurer on any proceeds of Bonds shall remain in the Project Fund and applied to pay such costs of the Project. Any balance remaining after payment of such amounts shall be paid by the State Treasurer to the Trustee and deposited in the Redemption Fund and applied to the redemption of Bonds of the related Series.

### **Application of Federal Highway Funds**

The assignment and pledge of Federal Highway Funds to the Trustee for the benefit of the Holders of the Bonds under Section 501 of the Trust Agreement is intended to and shall constitute a first lien on such Federal Highway Funds as provided in the Act. All Federal Highway Funds received by the State or the Trustee for the benefit of the State shall constitute Pledged Revenues, which shall be subject to the assignment and lien of the Trust Agreement upon receipt of the Trust Agreement by the State or the Trustee for the benefit of the State, as applicable.

Except as required for amounts held for the payment of Bonds not then deemed Outstanding, Federal Highway Funds need not be retained for any use or in any account under the Trust Agreement in excess of the amounts then required for the payment of Bond Payments, or Bond Related Costs due and payable in the current Federal Fiscal Year.

At any time the State Treasurer may transfer to the Trustee an amount of Federal Highway Funds and any other available funds then on deposit in the Federal Highway Grant Anticipation Bond Trust Fund 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 Bonds Outstanding as set forth in said certificate. Any transfer of Federal Highway Funds to either the Redemption Fund or Defeasance Account shall be revocable by the State Treasurer until the date on which the State Treasurer shall deliver to the Trustee a notice of redemption or defeasance specifying the principal amount of Bonds to be redeemed or defeased and, if applicable, the redemption date of such Bonds (the "Notice of Redemption or Defeasance"), at which time such transfer shall be irrevocable.

The Trustee is 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 such 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 Fund, the Rebate Fund and the Bond 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 create and maintain separate accounts identified by the appropriate Series designation within the Debt Service Fund to account for the receipt of moneys to pay, and the payment of, the Bond Payments on and Redemption Price of each Series of Bonds, but such separate accounts shall not affect the rights of the Holders of the Bonds with respect to moneys in the Debt Service Fund.

There shall be deposited into the Debt Service Fund (i) accrued interest, if any, received at the time of the issuance of any Bonds; (ii) any capitalized interest from the proceeds of a Series of Bonds; (iii) amounts paid to the Trustee constituting Federal Highway Funds and any other moneys received by the Trustee accompanied by directions that such moneys are to be deposited into the Debt Service Fund.

The Trustee shall use amounts received and deposited into the Debt Service Fund to pay an amount equal to the next interest payment becoming due on Bonds and any scheduled payment due under a Qualified Hedge Agreement on such Interest Payment Date or redemption date and to pay an amount equal to the next maturing principal payment of Bonds, if any, becoming due on such Interest Payment Date or redemption date. Amounts remaining shall be transferred as directed in writing by the State or as set forth in a Applicable Supplemental Trust Agreement.

#### **Redemption Fund**

The State 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 Bonds then due, the Trustee shall withdraw from the Redemption Fund and deposit in the Debt Service Fund the amount necessary to meet the deficiency (other than amounts held therein for the redemption of Bonds for which a notice of redemption shall have been given). Subject to the foregoing, amounts in the Redemption Fund may be applied by the State to the redemption of Bonds at prices not exceeding the applicable Redemption Prices (plus accrued interest) had such Bonds 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 in writing by an Authorized Officer.

## **Bond Related Costs Fund**

The amount on deposit and available in the Bond Related Costs Fund shall be applied by the Trustee to the payment of Bond Related Costs at the times and in the amounts as directed in writing 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 Bonds then due, the Trustee shall withdraw from the Bond Related Costs Fund, after withdrawal of amounts described above, and deposit in the Debt Service Fund the amount necessary to meet such deficiency.

Upon the certification of an Authorized Officer and all Fiduciaries that all Bond Related Costs have been paid, any balance in the Bond Related Costs Fund shall be paid by the Trustee to the State Treasurer free and clear of the lien created under 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 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 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. Permitted Investments purchased as an investment of moneys in any Fund or Account shall be deemed at all times to be a part of such Fund or Account and all income thereon shall accrue to and be deposited in such Fund or Account and all losses from investment shall be charged against such Fund or Account. 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. “Amortized cost,” when used with respect to an obligation purchased at a premium above or a discount below par, means the value as of any given time obtained by dividing the total premium or discount at which such obligation was purchased by the number of days remaining to maturity on such obligation at the date of such purchase and by multiplying the amount thus calculated by the number of days between the date of purchase and the maturity date; and (i) in the case of an obligation purchased at a premium by deducting the product thus obtained from the purchase price, and (ii) in the case of an obligation purchased at a discount by adding the product thus obtained to the purchase price. Unless otherwise provided in the Trust Agreement, Permitted Investments in any Fund or account thereunder shall be valued at least once in each State Fiscal Year on the last day thereof.

## **Powers as to Bonds and Pledge**

The State represents in the Trust Agreement that it is duly authorized under the Act and all applicable laws to create and issue Bonds thereunder and to adopt the Trust Agreement and to pledge the Pledged Funds in the manner and to the extent provided therein. The State 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 State agrees at all times, to the extent permitted by law to defend, preserve and protect the pledge of the Pledged Funds and all the rights of the Bondholders under the Trust Agreement against all claims and demands of all persons, whomsoever.

## **Extension of Payment of Bonds**

The State agrees not to directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of claims for interest by the purchase or funding of such Bonds or claims for interest or by any other arrangement, and in case the maturity of any of the Bonds or the time for payment of any such claims for interest shall be extended, such Bonds or claims for interest shall not be entitled, in case of any default under the Trust Agreement, to the benefit of the Trust Agreement or to any payment out of any assets of the State or

the funds (except funds held in trust for the payment of particular Bonds or claims for interest pursuant to the Trust Agreement) held by the Fiduciaries, except subject to the prior payment of the principal of all Bonds issued and Outstanding the maturity of which has not been extended and of such portion of the accrued interest on the Bonds as shall not be represented by such extended claims for interest. The State may issue Refunding Bonds and such issuance shall not be deemed to constitute an extension of maturity of Bonds.

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

In accordance with Section 12 of the Act, so long as any Bonds shall remain Outstanding, and so long as any Trust Agreement Obligations shall remain unpaid, the State covenants that the State shall carry out and perform, or cause to be carried out and performed, each and every promise, covenant, agreement, or contract made or entered into by the State or on its behalf by or under the Act and on its behalf to be performed, not issue any bonds, notes, or other evidences of indebtedness, other than Bonds, having any rights secured by any pledge of or other lien or charge on the Pledged Revenues, and shall not create or cause to be created any lien or charge on the Pledged Revenues, other than a lien and pledge thereon created by or pursuant to the provisions of the Act; provided that nothing in Section 12 of the Act shall prevent the State from issuing evidences of indebtedness that are secured by a pledge or lien which is and shall on the face of said evidences of indebtedness be expressed to be subordinate and junior in all respects to every lien and pledge created by or pursuant to the provisions of the Trust Agreement, pledge the full faith and credit of the State and which are not expressly secured by any specific lien or charge on revenues or any such moneys or securities or are secured by a pledge of or lien on moneys or funds to be derived on and after such date as every pledge or lien thereon created by or pursuant to the provisions of the Trust Agreement shall be discharged and satisfied and not divert Federal Highway Funds from the purposes in the Act and in the Trust Agreement except as provided in the Trust Agreement nor shall the trusts with which they are impressed under the Trust Agreement be broken, and the pledge and dedication in trust of such funds shall continue unimpaired or unabrogated.

For each of the Federal Fiscal Years during which Bonds are Outstanding, (i) as soon as practicable prior to such Federal Fiscal Year, the State agrees that it will cause the Department to request Obligation Authority sufficient to pay debt service on the Bonds and other Bond Related Costs coming due during such Federal Fiscal Year and (ii) the State agrees that it will obligate (to the extent not previously obligated) Obligation Authority to make debt service payments on the Bonds and other Bond Related Costs coming due in that Federal Fiscal Year prior to obligating Obligation Authority for any other purpose coming due in that Federal Fiscal Year or subsequent Federal Fiscal Years. In any event, the State shall set aside Obligation Authority sufficient for scheduled payments of debt service and other Bond Related Costs.

### **Payment of Federal Highway Funds to Trustee**

If Federal Highway Funds payable to the State are paid first to the State, the State agrees to pay the amount of Federal Highway Funds required under the Trust Agreement to the Trustee by the dates set forth in this paragraph. Not later than seven (7) days prior to each Bond Payment Date, the State will transfer to the Trustee, or shall request FHWA to pay to the Trustee, Federal Highway Funds equal to the amount of the Bond Payment becoming due to the Trustee for receipt by the Trustee four Business Days (or such other date prior to the Bond Payment Date if limited by FHWA) prior to the respective Bond Payment Date. The Trustee shall deposit the Bond Payments received by the Trustee as set forth in Section 505 of the Trust agreement. The amounts on deposit in each account of the Debt Service Fund shall be used only for the payment of the Series of Bonds for which the deposit was made. Notwithstanding anything to the contrary in the Trust Agreement, if there are not sufficient amounts on deposit in the Debt Service Fund three Business Days prior to the Bond Payment Date, the State shall immediately pay from the Federal Highway Grant Anticipation Bond Trust Fund, or request FHWA to pay, Federal Highway Funds to the Trustee in an amount equal to such deficiency for receipt by the Trustee or other paying agent on the next succeeding Business Day.

### **Covenant to Enforce the Federal Aid Agreements and the 2010 Memorandum of Agreement**

The State covenants that so long as any of the Bonds are Outstanding or any obligation of the State under any Credit Enhancement, Liquidity Facility or Qualified Hedge Agreement or otherwise under the Trust Agreement remains unpaid, it will take all reasonable action to enforce the Federal Aid Agreements, including without

limitation, the 2010 Memorandum of Agreement, to the extent permitted by law, and will not consent to any modification of the Federal Aid Agreements or the 2010 Memorandum of Agreement that would materially impair the security created for the holders of the Bonds and Credit Enhancement providers, Liquidity Facility and any Hedge Provider.

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

The State 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 Bonds from the federal gross income of Holders of any such Series of Tax Exempt Bonds. The State shall not permit the investment or application of the proceeds of any Series of Tax Exempt Bonds, 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 State 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(f) 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 under the Trust Agreement.

### **Limitation on Covenants**

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

### **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 Bond when due, whether at maturity or by call for mandatory redemption or redemption or purchase at the option of the State 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 Bond when due; or
- (iii) if default shall be made by the State in the performance or observance of the covenants, agreements and conditions on its part described under “Covenants as to Pledged Funds and Federal Highway Grant Anticipation Bond Trust Fund” above; or
- (iv) If default shall be made by the State 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 Bonds and such default shall continue for a period of thirty (30) days after written notice thereof shall be given to the State by the Trustee or to the State and the Trustee by the registered owners of a majority in principal amount of the Bonds Outstanding; provided that if such default cannot be remedied within such thirty-day period, it shall not constitute an Event of Default under the Trust Agreement if corrective action is instituted by the State within such period and diligently pursued until the default is remedied.

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

The State covenants that if an Event of Default shall happen and shall not have been remedied, the State, upon demand of the Trustee, shall pay over to the Trustee to the extent permitted by law forthwith, all Pledged Funds upon receipt and not otherwise held by the Trustee.

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 Bonds, as follows:
  - (a) unless the principal amount of all of the Bonds 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 Bonds 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 Bonds 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 Bonds shall have become due and payable, to the payment of the principal amount and interest then due and unpaid upon the Bonds 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 Bond over any other Bond, ratably, according to the amounts due respectively for principal amount and interest, to the persons entitled thereto, without any discrimination or preference;
- (iii) to the payment of any person entitled to the payment of any Bond Related Cost ratably in accordance with the amount of such Bond Related Costs.

The proceeds of any Credit Enhancement or Liquidity Facility shall be applied by the Trustee in the manner provided in the Supplemental Trust Agreement authorizing such Credit Enhancement or Liquidity Facility.

## **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 Bonds 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 Bonds 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 Bondholders not parties to such direction, unless the Trustee is indemnified to its satisfaction.

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 Bonds 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 Bondholders.

Nothing contained in the Trust Agreement is intended to preclude the Trustee upon the occurrence of an Event of Default thereunder 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 thereunder, including asserting any rights it may have as Trustee thereunder as a secured party with respect to all security granted thereunder.

### **Restriction on Bondholders' Action**

No registered owner of any Bond 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 Bonds 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.

Nothing in the Trust Agreement shall affect or impair the obligation of the State to pay on the respective dates of maturity thereof the principal amount of and interest on the Bonds, or affect or impair the right of action of any registered owner to enforce the payment of such owner's Bonds.

### **No Right of Acceleration**

Neither the Bondholders nor the Trustee shall have any right to accelerate the payment of principal or interest due on any Bonds 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 therein. No Fiduciary makes any representations as to the ability or sufficiency of the Trust Agreement or of any Bonds issued thereunder or in respect of the security afforded by the Trust Agreement and no Fiduciary shall incur any responsibility in respect thereof. Each Paying Agent shall, however, be responsible for its representation contained in its certificate of authentication on the Bonds to the extent provided in Article 8, Section 208, as amended, of the New Hampshire Uniform Commercial Code or any other successor provision of law. No Fiduciary shall be under any responsibility or duty with respect to the issuance of the Bonds for value or the application of the proceeds thereof or the application of any moneys paid to the State 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 of the Trust Agreement, or to advance any of its own moneys, unless properly indemnified to its satisfaction. No Fiduciary shall be liable in connection with the performance of its duties under the Trust Agreement except for its own gross 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. A Fiduciary shall have the right to act through its agents or attorneys. No permissive right of a Fiduciary described in the Trust Agreement shall be construed as a duty.

### **Compensation**

The State 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.

## **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 Bondholder 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 Bondholders as provided in the Trust Agreement, 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 Bonds then outstanding or their attorneys-in-fact duly authorized, excluding any Bonds held by or for the account of the State. 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 Bonds then Outstanding, excluding any Bonds held by or on account of the State. 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 Bondholders. Any Trustee appointed under the provisions of this Section 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 Effect upon Filing**

The State Treasurer, 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 Bonds;
- (iii) to add to the covenants and agreements of the State contained in the Trust Agreement other covenants and agreements thereafter to be observed for the purpose of further securing the Bonds;
- (iv) to surrender any right, power or privilege reserved to or conferred upon the State by the Trust Agreement;
- (v) to authorize Bonds of a Series and, in connection therewith, specify and determine any matters and things relative to such Bonds not contrary to or inconsistent with the Trust Agreement;

- (vi) to authorize any Credit Enhancement or Liquidity Facility;
- (vii) to exercise any provision in the Trust Agreement or to make such determinations thereunder 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 State 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 Bond Outstanding at the date such Supplemental Trust Agreement becomes effective.

### **Powers of Amendment**

Any modification or amendment of the Bonds 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 Bonds Outstanding at the time such consent is given, or (ii) in case less than all of the several Series of Bonds then Outstanding are affected by the modification or amendment, of the registered owners of at least a majority in principal amount of the Bonds 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 Bonds 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 Bonds of any specified like Series and maturity remain Outstanding, the vote or consent of the registered owners of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of outstanding Bonds; 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 Bond 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 Bond without the consent of the registered owner of such Bond, 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 Bonds the consent of which is required to effect any such modification or amendment.

### **Defeasance**

If the State shall pay or cause to be paid, or here shall otherwise be paid, to the registered owners of the Bonds 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 Bond 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.

Bonds or interest installments for the payment or redemption of which moneys shall be held by the Fiduciaries, whether at or prior to the maturity or the redemption date of such Bonds, shall be deemed to have been paid if (i) in case any of said Bonds 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 Bonds, (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, 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 Bonds on and prior to the redemption date or maturity date thereof, as the case may be. Neither Defeasance Obligations nor moneys deposited with the Trustee pursuant to this Section nor principal or interest payments on any such Defeasance Obligations shall be withdrawn or used for any purpose other than, and all of the same shall be held in trust for, the payment of the principal amount or Redemption Price, if applicable, and interest on said Bonds; provided, however that 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 reinvestment 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 Bonds 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 Bonds 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 Bonds.

Tender Bonds 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 Bonds which could become payable to the registered owners of such Bonds upon the exercise of any options provided to the registered owners of such Bonds; provided, however, that if, at the time a deposit is made with the Trustee pursuant to the provisions above, the options originally exercisable by the registered owner of Tender Bonds are no longer exercisable, such Bonds shall not be considered Tender Bonds.

### **Unclaimed Funds**

Any moneys held by the Fiduciary in trust for the payment and discharge of any Bonds which remain unclaimed for the applicable escheat period after the date when such Bonds 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 Bonds become due and payable, shall be paid to the State as its absolute property and free from trust, and the Fiduciary shall thereupon be released and discharged with respect thereto and the Bondholders shall look only to the State for the payment of such Bonds.

### **No Recourse on the Bonds**

No recourse shall be had for the payment of the principal or Redemption Price of or the interest on the Bonds or for any claim based thereon or on the Trust Agreement against any official, agent, representative or employee of the State or any person executing the Bonds. No official, agent, representative or employee of the State shall be held personally liable to any purchaser or holder of any Bond under or upon such Bond under or upon such Bond, or under or upon the Trust Agreement or any Supplemental Trust Agreement relating to Bonds, or, to the extent permitted by law, because of the sale or issuance or attempted sale or issuance of Bonds, or because of any act or omission in connection with the investment or management of the Pledged Funds, funds or moneys of the State, 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.

**FORM OF CONTINUING DISCLOSURE CERTIFICATE**

This Continuing Disclosure Certificate (the “Disclosure Certificate”) is executed and delivered by the State of New Hampshire (the “State”) in connection with the issuance of its \$98,250,000 Federal Highway Grant Anticipation Bonds, 2012 Series (the “Bonds”). The Bonds are being issued pursuant to the Trust Agreement dated October 20, 2010 (as amended and supplemented from time to time, the “Trust Agreement”) as supplemented by a Second Supplemental Trust Agreement dated May 1, 2012, each between the State and The Bank of New York Mellon Trust Company, N.A., as trustee. The State covenants and agrees as follows:

**SECTION 1. Purpose of the Disclosure Certificate.** This Disclosure Certificate is being executed and delivered by the State for the benefit of the Owners of the Bonds and in order to assist the Participating Underwriters in complying with the Rule.

**SECTION 2. Definitions.** The following capitalized terms shall have the following meanings when used herein:

“Annual Report” shall mean any Annual Report provided by the State pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

“Final Official Statement” shall mean the official statement of the State dated May 16, 2012 prepared in connection with the Bonds.

“Listed Events” shall mean any of the events listed in Section 5(a) of this Disclosure Certificate.

“MSRB” shall mean the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934, or any successor thereto or to the functions of the MSRB contemplated by this Disclosure Certificate. Filing information for the MSRB is set forth in Exhibit B hereto.

“Owners of the Bonds” shall mean the registered owners, including beneficial owners, of the Bonds.

“Participating Underwriter” shall mean any of the original underwriters of the Bonds required to comply with the Rule in connection with offering of the Bonds.

“Rule” shall mean Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

**SECTION 3. Provision of Annual Reports.**

(a) The State shall, not later than 270 days after the end of each fiscal year, provide to the MSRB an Annual Report that is consistent with the requirements of Section 4 of this Disclosure Certificate. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Certificate; provided that the audited financial statements of the State may be submitted separately from the balance of the Annual Report.

(b) If the State is unable to provide to the MSRB an Annual Report by the date required in subsection (a), the State shall send a notice to the MSRB in substantially the form attached as Exhibit A.

**SECTION 4. Content of Annual Reports.** The State’s Annual Report shall contain or incorporate by reference the following:

(a) to the extent not included in the financial statements described in (b) below, the financial information and operating data for the preceding fiscal year of the type included in the information appearing in the

Final Official Statement under the headings *Information Concerning the Funding of Federal-Aid Highways* with respect to the subsection – *Rescissions* on p. 24, and *State Participation in the Federal-Aid Highway Program* with respect to the subsections – *Funding History* on pp. 25-26 and – *Federal Reimbursement received by the State* on p. 26; provided, however, that references to the Final Official Statement for the Bonds as a means of identifying such financial information and operating data shall not prevent the State from reorganizing such material in subsequent official statements or annual information reports; and

(b) the most recently available audited financial statements of the State, prepared in accordance with generally accepted accounting principles, with separately stated information pertaining to the State’s Federal Highway Grant Anticipation Bond Trust Fund as defined in RSA 228-A.

If audited financial statements of the State pertaining to its Federal Highway Construction Trust Funds for the preceding fiscal year are not available when the Annual Report is submitted, the Annual Report will include unaudited financial statements for the preceding fiscal year.

Any or all of the items listed above may be incorporated by reference to other documents, including official statements of debt issues with respect to which the State is an “obligated person” (as defined in the Rule), which (i) are available to the public on the MSRB internet website or (ii) have been filed with the Securities and Exchange Commission. The State shall clearly identify each such other document so incorporated by reference.

The State reserves the right (i) to provide financial statements which are not audited if no longer required by law, (ii) to modify from time to time the format of the presentation of such information or date, and (iii) to modify the accounting principles it follows to the extent required by law, by changes in generally accepted accounting principles, or by changes in mandated State statutory principles as in effect from time to time; provided that the State agrees that the exercise of any such right will be done in a manner consistent with the Rule.

#### SECTION 5. Reporting of Significant Events.

(a) The State shall give notice, in accordance with subsection 5(b) below, of the occurrence of any of the following events with respect to the Bonds:

1. principal and interest payment delinquencies;
2. non-payment related defaults, if material;
3. unscheduled draws on the debt service reserves reflecting financial difficulties;
4. unscheduled draws on the credit enhancements reflecting financial difficulties;
5. substitution of the credit or liquidity providers or their failure to perform;
6. 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 Bonds, or other material events affecting the tax status of the Bonds;
7. modifications to rights of Bondholders, if material;
8. (i) bonds calls, if material, and (ii) tender offers;
9. defeasances;
10. release, substitution or sale of property securing repayment of the Bonds, if material;
11. rating changes;

12. bankruptcy, insolvency, receivership or similar event of the State\*;
13. the consummation of a merger, consolidation, or acquisition involving the State or the sale of all or substantially all of the assets of the State, 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; and
14. appointment of a successor or additional trustee or the change of name of a trustee, if material.

(b) Upon the occurrence of a Listed Event described in subsections (a)(2), (7), (8)(i), (10), (13) or (14), the State shall as soon as possible determine if such event is material under applicable federal securities laws.

(c) Upon the occurrence of a Listed Event described in subsections (a)(1), (3), (4), (5), (6), (8)(ii), (9), (11) or (12), and in the event the State determines that the occurrence of a Listed Event described in subsections (a)(2), (7), (8)(i), (10), (13) or (14) is material under applicable federal securities laws, the State 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.

SECTION 6. Transmission of Information and Notices. Unless otherwise required by law, all notices, documents and information provided to the MSRB shall be provided in electronic format as prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

SECTION 7. Termination of Reporting Obligation. The State's obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the State shall give notice of such termination in the same manner as for a Listed Event under Section 5(c).

SECTION 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the State may amend this Disclosure Certificate, and any provision of this Disclosure Certificate may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 4, or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (i) is approved by the Owners of the Bonds in the same manner as provided pursuant to the terms of the Bonds, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Holders or Beneficial Owners of the Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Certificate, the State shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by

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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 State 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 State, 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 State.

the State. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) the State shall promptly file a notice of such change with the MSRB, and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

SECTION 9. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the State from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the State chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Certificate, the State shall have no obligation under this Certificate to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

SECTION 10. Default. The State acknowledges that its undertakings set forth in this Disclosure Certificate are intended to be for the benefit of, and enforceable by, the beneficial owners from time to time of the Bonds. In the event the State shall fail to perform its duties hereunder, the State shall have the option to cure such failure within a reasonable time (but not exceeding 30 days with respect to the undertakings set forth in Section 3(a) of this Disclosure Certificate or five business days with respect to the undertakings set forth in Sections 3(b) and 5 of this Disclosure Certificate) from the time the State receives written notice of such failure from any beneficial owner of the Bonds. The present address of the State is State of New Hampshire, 25 Capitol Street, Room 121, Concord, New Hampshire 03301, attention: State Treasurer.

In the event the State does not cure such failure in the time specified above, the Trustee may (and, at the request of beneficial owners representing at least 25% in aggregate principal amount of Outstanding Bonds, and upon receipt of indemnification satisfactory to the Trustee, shall), take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the State to comply with its obligations under this Disclosure Certificate. Without regard to the foregoing, any beneficial owner may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the State to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an Event of Default under the Trust Agreement, and the sole remedy under this Disclosure Certificate in the event of any failure of the State to comply with this Disclosure Certificate shall be an action to compel performance. The State expressly acknowledges and the beneficial owners are hereby deemed to expressly agree that no monetary damages shall arise or be payable hereunder nor shall any failure to comply with this Disclosure Certificate constitute an event of default with respect to the Bonds.

SECTION 11. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the Owners of the Bonds from time to time, and shall create no rights in any other person or entity.

Date: May 30, 2012

STATE OF NEW HAMPSHIRE

By: \_\_\_\_\_  
State Treasurer

\_\_\_\_\_  
Governor

\_\_\_\_\_  
Commissioner of Department of  
Transportation

**EXHIBIT A**

**NOTICE TO REPOSITORIES OF FAILURE TO FILE ANNUAL REPORT**

Name of State: State of New Hampshire

Name of Bond Issue: \$98,250,000 Federal Highway Grant Anticipation Bonds, 2012 Series

Date of Issuance: May 30, 2012

NOTICE IS HEREBY GIVEN that the State has not provided an Annual Report with respect to the above-named Bonds as required by the Continuing Disclosure Certificate dated May 30, 2012. The State anticipates that the Annual Report will be filed by \_\_\_\_\_.

Dated: \_\_\_\_\_

STATE OF NEW HAMPSHIRE

By \_\_\_\_\_  
State Treasurer

**EXHIBIT B**

Filing information relating to the Municipal Securities Rulemaking Board is as follows:

Municipal Securities Rulemaking Board

<http://emma.msrb.org>

PROPOSED FORM OF OPINION

(Date of Delivery)

The Honorable Catherine A. Provencher  
State Treasurer  
State House Annex  
Concord, New Hampshire 03301

\$98,250,000  
State of New Hampshire  
Federal Highway Grant Anticipation Bonds  
2012 Series  
Dated the Date of Delivery

We have acted as bond counsel to the State of New Hampshire (the “State”) in connection with the issuance by the State of the above-referenced bonds (the “2012 Bonds”). In such capacity, we have examined the law and such certified proceedings and other papers as we have deemed necessary to render this opinion, including RSA 228-A, as amended (the “Act”) and other applicable statutes. We have also examined the Trust Agreement dated as of October 20, 2010 (as previously amended and supplemented, the “Trust Agreement”), between the State and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”) and the Second Supplemental Trust Agreement dated as of May 1, 2012 (the “Second Supplemental Trust Agreement” and, together with the Trust Agreement, the “Agreement”) between the State and the Trustee. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

The 2012 Bonds are issued pursuant to the Agreement. Bonds issued under the Agreement, including the 2012 Bonds, are payable from and secured by a pledge of Pledged Funds.

As to questions of fact material to our opinion we have relied upon representations and covenants of the State contained in the certified proceedings and other certifications of public officials furnished to us, without undertaking to verify the same by independent investigation.

Based on our examination, we are of the opinion, under existing law, as follows:

1. The State has the right and power under the Act to enter into the Trust Agreement and the Second Supplemental Trust Agreement and the Trust Agreement and the Second Supplemental Trust Agreement have been duly authorized, executed and delivered by the State, are in full force and effect and constitute valid and binding obligations of the State enforceable upon the State in accordance with the respective terms thereof. No other authorization for the Agreement is required.
2. Pursuant to the Act, the Agreement creates the valid pledge that it purports to create of the Pledged Funds, rights, moneys, securities and funds held under the Agreement, in the manner and to the extent provided in the Agreement, for the security of the 2012 Bonds on a parity with other bonds issued and to be issued under the Agreement.
3. The 2012 Bonds have been duly authorized, executed and delivered by the State and are valid and binding special obligations of the State, enforceable in accordance with the terms thereof and the terms of the Agreement. The 2012 Bonds are entitled to the benefits of the Act, as provided under the Agreement, and of the Agreement. The 2012 Bonds are not general obligations of the State, and the full faith and credit of the State are not pledged to the payment thereof. The 2012 Bonds are payable solely from the sources provided therefor in the Agreement.
4. Interest on the 2012 Bonds is excluded from the gross income of the owners of the 2012 Bonds for federal income tax purposes. In addition, interest on the 2012 Bonds is not a specific preference item for purposes of the federal

individual or corporate alternative minimum taxes although such interest is included in adjusted current earnings when calculating corporate alternative minimum taxable income. In rendering the opinions set forth in this paragraph, we have assumed compliance by the State with all requirements of the Internal Revenue Code of 1986 that must be satisfied subsequent to the issuance of the 2012 Bonds in order that interest thereon be, and continue to be, excluded from gross income for federal income tax purposes. The State has covenanted to comply with all such requirements. Failure by the State to comply with certain of such requirements may cause interest on the 2012 Bonds to become included in gross income for federal income tax purposes retroactive to the date of issuance of the 2012 Bonds.

5. Interest on the 2012 Bonds is exempt from the New Hampshire personal income tax on interest and dividends. We express no opinion regarding any other New Hampshire tax consequences arising with respect to the 2012 Bonds or any tax consequences arising with respect to the 2012 Bonds under the laws of any state other than New Hampshire.

This opinion is expressed as of the date hereof, and we neither assume nor undertake any obligation to update, revise, supplement or restate this opinion to reflect any action taken or omitted, or any facts or circumstances or changes in law or in the interpretation thereof, that may hereafter arise or occur, or for any other reason.

The rights of the holders of the 2012 Bonds and the enforceability of the 2012 Bonds may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable, and their enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

EDWARDS WILDMAN PALMER LLP

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