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An Audit Report on  
**The Texas State University System  
Foundation, Inc. and  
Transactions Involving the Texan  
Hall Dormitory at Angelo State  
University**

March 2009  
Report No. 09-023



An Audit Report on

# *The Texas State University System Foundation, Inc. and Transactions Involving the Texan Hall Dormitory at Angelo State University*

SAO Report No. 09-023  
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## *Overall Conclusion*

The Texas State University System Foundation, Inc. (Foundation) received \$1,833,696 in student housing revenue when it sold the Texan Hall dormitory, located on the Angelo State University campus, to the Texas State University System (System) in June 2006.

A portion of this transfer did not conform to the resolutions passed by the boards of the Foundation and the System. Specifically, due to an error in the closing documents for the sale, \$891,721 that was originally authorized to be transferred to the System was instead transferred to the Foundation.

The \$891,721 was originally authorized to pay principal and interest on the System's Series 2006 bonds and for repair and replacement of the Texan Hall dormitory. The Foundation used \$228,984 to make a partial interest payment on behalf of Angelo State University on the Series 2006 bonds issued by the System, but the Foundation retained the remainder of the funds it received. The Foundation's financial statements for fiscal year 2007 show that repair and replacement funds were designated for the benefit of Angelo State University. The repair and replacement funds totaled \$261,515, but Angelo State University has not received those funds. The Foundation asserted it did not receive the three-year maintenance plan it required from Angelo State University in order to disburse repair and replacement funds. Angelo State University asserted that it submitted that plan.

When the Texan Hall dormitory was sold, the Foundation also received an additional \$102,301 that had originally been allocated to the management company for the dormitory.

Appendix 3, Figure 2, page 16, provides detailed information on all of the funds the Foundation received when the Texan Hall dormitory was sold.

### **Background Information**

In the early 2000s, the Texas State University System Foundation, Inc. (Foundation), a nonprofit corporation, formed four limited liability companies to use proceeds from bonds issued by Raven Hills Higher Education Corporation to build dormitories at three Texas State University System (System) higher education institutions. A total of \$18.7 million was issued as Series 2002 bonds to build the Texan Hall dormitory at Angelo State University.

In June 2006, the System purchased the dormitories from the Foundation by issuing \$140,260,000 in Series 2006 bonds (included \$17,225,000 for the Texan Hall dormitory) to pay off the Foundation debt. See Appendix 2 on page 13 for a detailed timeline of the events surrounding these transactions.

In September 2007, House Bill 3564 (80th Legislature) transferred Angelo State University from the Texas State University System to the Texas Tech University System. This bill gave the Higher Education Coordinating Board (Coordinating Board) the authority to resolve disagreements regarding this transfer. See Appendix 7 on page 24 for excerpts from the bill, Appendix 8 on page 27 for a related letter from the Office of the Attorney General, and Appendix 9 on page 29 for the Coordinating Board's resolution.

*This audit was conducted in accordance with Texas Government Code, Sections 321.0131 and 321.0132.*

*For more information regarding this report, please contact Verma Elliott, Audit Manager, or John Keel, State Auditor, at (512) 936-9500.*

It is important to note that the funds the Foundation received were student housing revenues and not bond proceeds. The \$1,224,088 that remained in original bond proceeds (Series 2002) at the time of the sale of the Texan Hall dormitory was transferred into an escrow account to reduce the amount of new bonds issued. All new bond proceeds (Series 2006) were used to redeem the original bonds and pay issuance costs.

Auditors also identified weaknesses in controls over the student housing project at both the Foundation and the System. For example:

- The Foundation did not adequately monitor the management company or trustee for the Texan Hall dormitory.
- The Foundation did not maintain sufficient financial records and did not consistently produce annual financial statements.
- The Foundation and System did not ensure that contractually required ground lease payments were calculated correctly or made when due.

Maintaining adequate controls over the student housing project was particularly important because the composition of the Foundation's board of directors and the use of certain advisors resulted in less than arm's-length transactions between the Foundation and the System. The Foundation's board of directors includes current and former members of the System's board of regents and System administrators. The Foundation and the System shared the same bond counsel and financial advisor for the bond transactions. (See Appendix 4 for detailed information regarding the parties involved in the construction and operation of the Texan Hall dormitory.) Additionally, the control weaknesses auditors identified potentially affected three other dormitories that the Foundation constructed and operated at other System component institutions.

Based on the results of this audit, the State Auditor's Office will consider conducting an audit of the Foundation if resources become available.

## ***Summary of Management's Response***

The Foundation agreed with the recommendations in this report, and its full responses are presented in Appendix 10 on page 32.

The State Auditor's Office provided the System with an opportunity to respond to this report. The System chose not to provide a response. In addition, the System did not provide all of the representations that the State Auditor's Office requested (see Appendix 11 on page 51).

## ***Summary of Objectives, Scope, and Methodology***

The audit objectives were to:

- Examine the transactions of the Foundation's financing of the Texan Hall dormitory at Angelo State University, including the transactions involving the formation and dissolution of the limited liability company.
- Determine whether the Foundation has transferred all funds pertaining to the construction and operation of the Texan Hall dormitory appropriated, dedicated, or held for the use and benefit of Angelo State University to the Texas Tech University System.

The audit scope covered December 2002 to December 2008 and included all transactions involved in the Foundation's creating a limited liability company to build and finance the Texan Hall dormitory; the operation of that dormitory; and the sale of that dormitory from the Foundation to the System, with concurrent redemption of the original bonds and issuance of new bonds.

The audit methodology included analyzing bank statements and financial records; interviewing personnel; examining contracts and bond documents; reviewing internal audit reports; reviewing board of directors and board of regents meeting minutes; researching federal and state laws; and examining Foundation, System, Angelo State University, and management company accounting records.

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# Detailed Results

## Chapter 1

### ***The Foundation Received Student Housing Revenue That Was Authorized to Be Transferred to the System; However, No Bond Proceeds Were Transferred to the Foundation***

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The Texas State University System Foundation, Inc. (Foundation) received \$1,833,696 in student housing revenue when it sold the Texan Hall dormitory, located on the campus of Angelo State University, to the Texas State University System (System) in June 2006.

#### **The Appendices to This Report Provide Detailed Information**

The following appendices provide detailed background information regarding the sale of Texan Hall dormitory:

- Appendix 2 on page 13 provides a timeline of the major events.
- Appendix 3 on page 15 describes the flow of funds.
- Appendix 4 on page 17 describes the parties involved in the transactions.
- Appendix 5 on page 18 presents a memo from the chancellor of the Texas State University System describing the goals of the bond refunding and the intended uses of funds available after the refunding.
- Appendix 6 on page 22 summarizes information about the Foundation.
- Appendix 7 on page 24 contains excerpts from House Bill 3564 (80th Legislature).
- Appendix 8 on page 27 presents a letter from the Office of the Attorney General.
- Appendix 9 on page 29 presents a resolution from the Higher Education Coordinating Board.

A portion of this transfer did not conform to the resolutions passed by the Foundation's board of directors and the System's board of regents. Specifically, due to an error in the closing documents for the sale, \$891,721 that was originally authorized to be transferred to the System was instead transferred to the Foundation. The \$891,721 included:

- \$630,206 that had been authorized to pay principal and interest on the System's Series 2006<sup>1</sup> bonds.
- \$261,515 that had been designated to pay for repair and replacement of the Texan Hall dormitory.

The Foundation used \$228,984 of the revenue it received to make a partial interest payment on the Series 2006 bonds issued by the System, but it retained the remainder of the funds it received.

It is important to note that the funds the Foundation received were student housing revenues and not bond proceeds. The \$1,224,088 that remained in original bond proceeds (Series 2002<sup>2</sup>) at the time of the sale of the Texan Hall dormitory was transferred into an escrow account to reduce the amount of new bonds issued. All new bond proceeds (Series 2006) were used to redeem the original bonds and pay issuance costs.

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<sup>1</sup> The System purchased four dormitories located at three System component institutions from the Foundation in June 2006 by issuing \$140,260,000 in Series 2006 parity bonds (including \$17,225,000 for the Texan Hall dormitory) to pay off the Foundation's debt.

<sup>2</sup> The Foundation, a nonprofit corporation, formed four limited liability companies to use the proceeds from Series 2002 bonds, issued by Raven Hills Higher Education Corporation, to build four dormitories at System component institutions. A total of \$18.7 million from those proceeds was issued to build Texan Hall dormitory at Angelo State University.

The information presented below provides further details on these transactions. Appendix 2 contains a detailed timeline of the events surrounding these transactions, and Appendix 3 contains detailed information on the flow of bond funds and student housing revenue.

The Foundation received student housing revenue that was authorized to be transferred to the System.

As discussed above, the Foundation received a total of \$1,833,696 in student housing revenue upon the sale of the Texan Hall dormitory to the System. During the time that the Series 2002 bonds were still outstanding, the proceeds from these bonds and revenues from the dormitory were held in various reserve funds with specific purposes as designated in bond documents (see text box). When the Series 2002 bonds were redeemed, all remaining revenue funds became distributable.

**Funds the Foundation Received Upon the Sale of Texan Hall Dormitory**

The Foundation received a total of \$1,833,696 in student housing revenue, which included:

- \$630,206 from the bond fund for the payment of debt service.
- \$574,516 from the operations contingency fund.
- \$261,515 from the repair and replacement fund for maintenance of the Texan Hall dormitory.
- \$208,679 from the surplus fund.
- \$158,780 from the other revenue reserve funds.

In a May 2006 memo to the System's Board of Regents, the System's chancellor specified the following regarding the distribution of the funds:

Now that the refunding is completed, some of these funds will be held at the System to create what the original Regents and Directors contemplated – a Foundation to advance education through financial support for the operations of the System. Other funds will be used to pay the first year's debt payment and a reserve for maintenance will be held at the System for each of the components with these housing units.

See Appendix 5 for a copy of the chancellor's memo. Following the intent of that memo, Texan Hall dormitory managers authorized all monies in the repair and replacement fund and the bond fund to be deposited with the System. However, the bond closing statements for the sale contained an error that caused the bond fund and the repair and replacement fund to be transferred to the Foundation, instead of to the System.

Despite the error in the closing statements, the Foundation and the System made attempts to follow the original intent of the memo and resolution. Specifically, the Foundation initially offered to distribute the repair and replacement funds to Angelo State University (this is discussed below in more detail) and made a partial interest payment on the System's 2006 series bonds.



Angelo State University did not receive repair and replacement funds.

Angelo State University was eligible to receive \$261,515 in repair and replacement funds from the Foundation following the submission of a three-year maintenance plan for the Texan Hall dormitory to the Foundation. However, it has not received those funds.

A June 2006 e-mail from the System's vice chancellor to Angelo State University and the two other System component institutions that had dormitories that were sold to the System, stated that, once a three-year maintenance plan was submitted to the Foundation, the Foundation would distribute the repair and replacement funds. Angelo State University asserted that it created that plan in June 2006 and submitted it to the System in July 2006, but it does not have documentation to support its assertion that it submitted that plan to the Foundation. The Foundation asserts that it did not receive that plan and that the due date has passed for Angelo State University to submit that plan. However, the Foundation was unable to provide documentation to support that it had established a due date for the three-year maintenance plan.

**Excerpt from the Foundation's Audited Financial Statements for the Year Ended August 31, 2007**

**Note 3 - Designated Net Assets:**

During the year ended August 31, 2006, the Foundation sold its ownership interests in four student housing facilities to the System. As a requirement of the sale of the assets, the System issued Revenue Financing System Revenue Bonds, Series 2006 to defease the outstanding obligations. The foundation designated the balance of the repair and replacement reserve funds for the benefit of the three universities where the student housing facilities are located. The universities are to present a plan for expenditure of these funds and the Foundation will release the funds to the universities. The Foundation released \$216,272 during the year ended August 31, 2007. Designated net assets as of August 31, 2007 were \$2,230,300.

The Foundation's financial statements for fiscal year ended August 31, 2007, one day before Angelo State University was transferred to the Texas Tech University System, show the repair and replacement funds designated for the benefit of Angelo State University (see text box). However, Angelo State University did not receive any repair and replacement funds. The Foundation asserts that the offer to distribute the repair and replacement funds is no longer valid because Angelo State University is now part of the Texas Tech University System.

The Foundation made a partial payment toward interest on the Series 2006 bonds, but it retained a portion of the bond fund monies.

After noting the error in the closing statements discussed above, the Foundation contributed \$228,984 toward the first interest payment due for the Series 2006 bonds on behalf of Angelo State University. This payment represented 36 percent of the balance in the bond fund.

The Foundation retained the remaining 64 percent of the bond fund revenue it received from the sale of the Texan Hall dormitory and combined it with the Foundation's general fund. As noted above, if that revenue had been transferred to the System instead of to the Foundation, this would have left \$401,222 from the bond fund under System control to help offset the remaining \$749,919 of the first year's debt service on the Series 2006 bonds.

No bond proceeds were transferred to the Foundation.

All original Series 2002 bond proceeds initially deposited into trustee accounts were used to pay project costs or transferred into the escrow account at the closing of the sale of the Texan Hall dormitory to the System. Additionally, all new bond proceeds (Series 2006) were used to redeem the original bonds and pay issuance costs. No bond proceeds were transferred to the Foundation.

## ***The Foundation and the System Did Not Adequately Monitor Financial Operations Related to the Texan Hall Dormitory***

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The Foundation and the System did not have adequate controls to monitor the financial operations involved in the \$18.7 million project to construct and operate the Texan Hall dormitory. For example:

### **Management Company**

Texan Hall LLC, which was owned by the Foundation, hired a management company to develop, construct, and operate the Texan Hall dormitory on the Angelo State University campus. The management company was paid management fees and was given a budgeted amount for operating expenses.

### **Trustee**

According to Series 2002 bond documents, the trustee was responsible for handling all the administrative aspects of the bonds, including ensuring that Texan Hall LLC complied with the terms in the bond documents. The trustee held all bond proceeds and project revenues, and it was responsible for transferring money to vendors and the management company to pay expenses and fees.

- The Foundation did not adequately monitor the management company or trustee for the Texan Hall dormitory (see text box for background information on the management company and the trustee).
- The Foundation did not maintain sufficient financial records and did not consistently produce annual financial statements.
- The Foundation and System did not ensure that contractually required ground lease payments were calculated correctly or made when due.

These control weaknesses resulted in the following:

- Auditors could not determine whether all management company fees and expenses the Foundation paid were appropriate.
- Funds held by the trustee did not flow in accordance with bond documents. This flow of funds affected the calculation of the ground lease payments due to the System and the amounts

transferred to the escrow account and Foundation upon the sale of the Texan Hall dormitory.

- The System did not receive at least \$225,000 in ground lease payments from the Foundation for the use of land at Angelo State University to build and operate the Texan Hall dormitory.

Maintaining adequate controls was particularly important because the composition of the Foundation's board of directors and the use of certain advisors resulted in less than arm's-length transactions between the Foundation and the System. The Foundation's board of directors includes current and former members of the System's board of regents and System administrators. The Foundation and the System shared the same bond counsel and financial advisor for the bond transactions, and System accounting staff maintained the Foundation's financial records. (See Appendix 4 for detailed information regarding the parties involved in the construction and operation of the Texan Hall dormitory.) The control weaknesses auditors identified potentially affected three other dormitories that the Foundation constructed and operated at other System component institutions.

## **The Foundation Did Not Have Adequate Controls Over Financial Transactions Involving the Texan Hall Dormitory**

The Foundation did not have adequate controls to monitor the financial operations involved in the \$18.7 million project to construct and operate the Texan Hall dormitory. The Foundation contracted with one staff member to oversee the construction and operation of the Texan Hall dormitory at Angelo State University and three dormitories at other System component institutions. Prior to the construction of these dormitories, the Foundation did not employ any staff.

**The Foundation did not adequately monitor the management company for the Texan Hall dormitory.**

The Foundation did not conduct adequate oversight of the management company for the Texan Hall dormitory and paid the incorrect amount of management fees to the management company. Additionally, the Foundation did not adequately monitor other payments to the management company. For example, the Foundation made several payments to the management company from the construction fund, even though the management company's payment requests were submitted months after construction had been finished and lacked itemized descriptions, signatures, receipts, and other supporting documentation.

In June 2006, when the Texan Hall dormitory was sold to the System, the management company held \$178,035 in dormitory revenue previously allocated to it for operating expenses. The management company retained \$58,000 of these funds for additional management fees and used \$17,734 to pay miscellaneous operating expenses. The Foundation was unaware of this. Auditors could not determine whether the additional management fees and expenses were appropriate because the Foundation was unable to provide auditors with the termination date of its contract with the management company.

The remaining \$102,301 held by the management company was transferred to the Foundation. A June 2006 e-mail from the System's vice chancellor to Angelo State University and the two other System component institutions that had dormitories that were sold to the System stated that the remaining funds from the management company would be distributed after the Foundation received and reconciled the balances. Angelo State University has not received these funds.

**The Foundation did not adequately monitor the trustee.**

The Foundation did not conduct adequate monitoring of the trustee to ensure compliance with contract and bond agreements. The trustee held all bond proceeds and project revenues, and it was responsible for transferring money to vendors and the management company to pay expenses and fees.

The trustee did not make transfers outlined by the bond documents at the correct time or in the correct amounts. Excess transfers from the revenue fund to the bond fund between September 2003 and May 2006 resulted in the bond fund being overfunded by \$528,974 in May 2006. In addition, the trustee made some of the required transfers between accounts more than six months late. The errors in the fund balances affected (1) the calculation of ground lease payments due to the System and (2) the amounts transferred to the escrow account and the Foundation at the sale of Texan Hall dormitory.

**The Foundation did not maintain sufficient financial records and did not consistently produce annual financial statements.**

The Foundation did not maintain adequate financial records with sufficient detail to determine whether transactions associated with the Texan Hall dormitory were reasonable and correct. Some supporting documentation for transactions lacked information such as dates, vendor information, receipts, or time sheets. Without adequate supporting documentation, it is not possible to determine whether these transactions were appropriate.

Because the Foundation has only one staff member, System accounting staff maintain the Foundation's financial records. At the time of the creation of Texan Hall LLC in 2002, the Foundation did not have a separate check register; instead, Foundation financial information was contained within the System's accounting records. A separate check register for the Foundation was not created until September 2005; however, System staff continued to provide accounting services to the Foundation.

Additionally, the Foundation did not produce annual financial statements for the first 30 years of its operation (1977 through 2006). The first set of annual financial statements the Foundation created was for fiscal year 2007, the year after the sale of the Texan Hall dormitory and the transfer of funds into Foundation accounts. Without Foundation financial statements for fiscal year 2006, it is difficult to determine what happened during the transition period immediately following the sale of the Texan Hall dormitory. According to Texas Civil Statutes, Title 32, Chapter 9, nonprofit corporations are required to prepare annual financial statements.

## Foundation and System Controls Over Ground Lease Payments Were Not Adequate

The Foundation did not have adequate controls over calculating and making ground lease payments it owed to the System for the use of land at Angelo State University. The System did not adequately monitor its ground lease

### Ground Lease Agreement

In December 2002, the System entered into a ground lease agreement with Texan Hall LLC, which was owned by the Foundation, to construct and operate the Texan Hall dormitory on the Angelo State University campus. According to the ground lease agreement provisions, if certain conditions were met, Texan Hall LLC was required to make annual ground lease payments to the System for the use of the land at Angelo State University.

agreement with Texan Hall LLC to ensure that the terms of the ground lease were followed. As a result, the System did not receive at least \$225,000 in ground lease payments and was not aware it was due these payments. These control issues also affected the ground lease payments the Foundation owed to the System for three other dormitories the Foundation constructed and operated at other System component institutions.

Neither Texan Hall LLC nor the Foundation made any ground lease payments to the System for the Texan Hall dormitory. Specifically:

- Texan Hall LLC's fiscal year 2004 financial statements stated that funds were available to make a ground lease payment, but bond covenants required that the funds be retained. However, Foundation staff were unable to demonstrate why a ground lease payment should not have been made.
- For fiscal year 2005, the Foundation requested that the trustee make a ground lease payment to the System. According to trustee and System records, this ground lease payment, which was requested in March 2006, was never made. Foundation staff assert that the payment was not made because the refunding of the Series 2002 bonds was about to occur in June 2006. The Foundation could not provide auditors with documentation explaining why the payment request was not fulfilled.

Additionally, the Foundation did not calculate the ground lease payment amounts for fiscal years 2004 and 2005 in accordance with the ground lease agreement. The Foundation's calculations significantly understated the ground lease payment amounts due to the System. Because the trustee did not maintain project revenue funds in accordance with bond documents, the exact amounts of the ground lease payments owed to the System are unclear. However, based on the Foundation's calculations, total ground lease payments should have been at least \$225,000 for the period during which the Foundation owned and operated the Texan Hall dormitory.

## Recommendations

The Foundation and the System should develop and implement policies and procedures to ensure they maintain adequate accounting records and conduct adequate monitoring of their contracts.

The Foundation should:

- Publish annual financial statements.
- Develop and implement controls to monitor financial transactions.

# Appendices

Appendix 1

## **Objectives, Scope, and Methodology**

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### Objectives

The objectives of this audit were to:

- Examine the transactions of the Texas State University System Foundation, Inc.'s (Foundation) financing of the Texan Hall dormitory at Angelo State University, including the transactions involving the formation and dissolution of the limited liability company.
- Determine whether the Foundation has transferred all funds pertaining to the construction and operation of the Texan Hall dormitory appropriated, dedicated, or held for the use and benefit of Angelo State University to the Texas Tech University System.

### Scope

The scope of this audit was from December 2002 to December 2008 and included all transactions involved in the Foundation's creating a limited liability company to build the Texan Hall dormitory; the issuance of the original bonds to finance construction; operation of that dormitory; and the sale of that dormitory from the Foundation to the Texas State University System (System), with concurrent redemption of the original bonds and issuance of new bonds.

### Methodology

The audit methodology included analyzing bank statements and financial records; interviewing personnel; examining contracts and bond documents; reviewing internal audit reports and board of directors and board of regents meeting minutes; researching federal and state laws; and examining Foundation, System, Angelo State University, and management company accounting records.

Information collected and reviewed included the following:

- Bank and trustee statements.
- Foundation and System by-laws and resolutions.
- System board of regents meeting minutes.
- Bond and trust indentures.



- Management company contracts.
- Accounting records and financial statements.
- Construction draws.
- Legislative committee hearings.
- Bond Review Board meeting minutes.
- Internal audit reports.
- Higher Education Coordinating Board meeting minutes.

Procedures and tests conducted included the following:

- Compared bank statements to accounting records and financial statements.
- Conducted interviews with staff at relevant state agencies and higher education institutions.
- Analyzed trustee statements.
- Examined management contracts.
- Reviewed Foundation and System by-laws and meeting minutes.
- Verified supporting documentation for transactions.
- Traced flow of funds through reserve accounts.
- Evaluated flow of funds for compliance with bond indenture.

Criteria used included the following:

- House Bill 3564 (80th Legislature).
- Texas Civil Statutes, Title 32, Chapter 9.
- Texas Education Code, Chapters 53, 54, 55, and 95.

### **Project Information**

Audit fieldwork was conducted from December 2008 through January 2009. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The following members of the State Auditor's staff performed the audit:

- Kristin Alexander, CIA, CFE (Project Manager)
- Mary Goldwater (Assistant Project Manager)
- Michele Pheeney, MBA
- Karenin Sandoval
- Charles P. Dunlap, Jr., CPA (Quality Control Reviewer)
- Verma Elliott, MBA, CIA, CGAP (Audit Manager)

## ***Timeline of Events Associated with the Construction and Operation of the Texan Hall Dormitory***

Table 1 provides a chronology of the events associated with the construction and operation of the Texan Hall dormitory.

Table 1

<b>Events Associated with the Construction and Operation of the Texan Hall Dormitory</b>	
<b>Date</b>	<b>Event</b>
June 12, 2001	The Texas State University System Foundation, Inc. (Foundation) amends its articles of incorporation to reserve the right to use funds for purposes determined by its board of directors.
October 9, 2001	The City of Huntsville creates Raven Hills Higher Education Corporation to issue bonds for construction of student housing. The bonds are payable solely from revenues. Bonds are not a debt of the city.
November 12, 2002	The managers of Texan Hall dormitory approve Texan Hall LLC governing documents. The managers of Texan Hall dormitory authorize the loan agreement, ground lease, development agreement, and management agreement in connection with the issuance of bonds by Raven Hills Higher Education Corporation. The sole owner of the limited liability company is the Foundation.
November 19, 2002	Raven Hills Higher Education Corporation approves Texan Hall Series 2002 bonds.
December 1, 2002	The ground lease for the Texan Hall dormitory goes into effect. The ground lease states that any remaining amounts in any fund at redemption of the bonds will go to the Texas State University System (System).
August 2003	The Texan Hall dormitory opens.
February 17, 2006	The System's 11th supplemental resolution authorizes the issuance of bonds to purchase student housing, including the Texan Hall dormitory. The resolution provides for the transfer of repair and replacement funds for the dormitories to the System. The System is authorized to enter into an agreement with Angelo State University governing use of the funds and future deposits to the funds.
March 23, 2006	The Texas Bond Review Board approves the issuance of the new bonds.
April 17, 2006	The Texan Hall dormitory managers authorize redemption and sale of the Texan Hall dormitory to the System. Upon redemption of the Series 2002 bonds, all funds held by the trustee, other than those held in escrow related to defeasance and redemption of the bonds, are to be wire transferred to the System.
May 18, 2006	The chairman of the Foundation's board of directors presents a report to the System's board of regents' finance and curriculum committees on the "Allocation of Foundation Reserve Funds" resulting from the sale of the Texan Hall dormitory to the System.
May 22, 2006	Draft closing statements for the sale of the Texan Hall dormitory are distributed for comments. The draft statements show that the bond fund and the repair and replacement fund are to go to the System; other revenue is to go to the Foundation.
May 24, 2006	Texan Hall dormitory managers amend the resolution of April 17, 2006, concerning disposition of the remaining funds on deposit with the trustee. Upon redemption of the Series 2002 bonds, bond funds and repair and replacement funds are to go to the System, and all remaining funds not in escrow related to defeasance and redemption of the bonds are to go to the Foundation.
May 26, 2006	Closing statements for the sale of the Texan Hall dormitory are finalized. Final statements show that bond fund and repair and replacement fund are to go to the Foundation, along with other revenue funds.
June 7, 2006	The Office of the Attorney General approves the issuance of the new bonds.

Events Associated with the Construction and Operation of the Texan Hall Dormitory	
Date	Event
June 8, 2006	Series 2002 bonds are redeemed, new Series 2006 bonds are issued, and revenue funds are transferred to the Foundation.
September 1, 2007	House Bill 3564 (80th Legislature) transfers Angelo State University from the Texas State University System to the Texas Tech University System. If the boards of regents of the two systems are unable to agree about any details, the Higher Education Coordinating Board is required to resolve the disagreement in the best interest of the State and the institutions and may issue orders to facilitate the transfer.

## Flow of Funds Associated with the Texan Hall Dormitory

Figure 1 describes the flow of bond proceeds and revenues associated with the Texan Hall dormitory. Figure 2 provides a breakdown of the funds associated with the Texan Hall dormitory that the Foundation received.

Figure 1

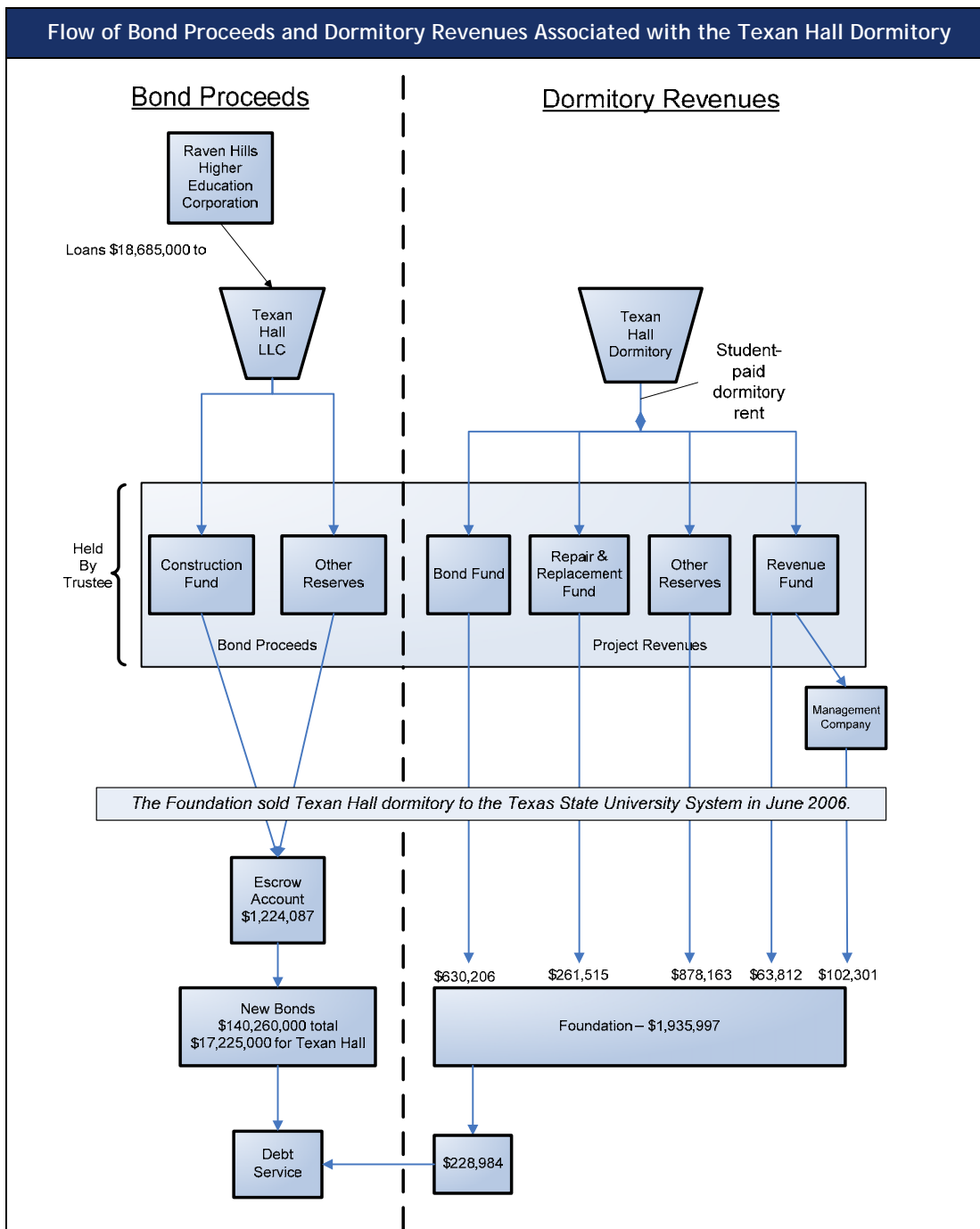
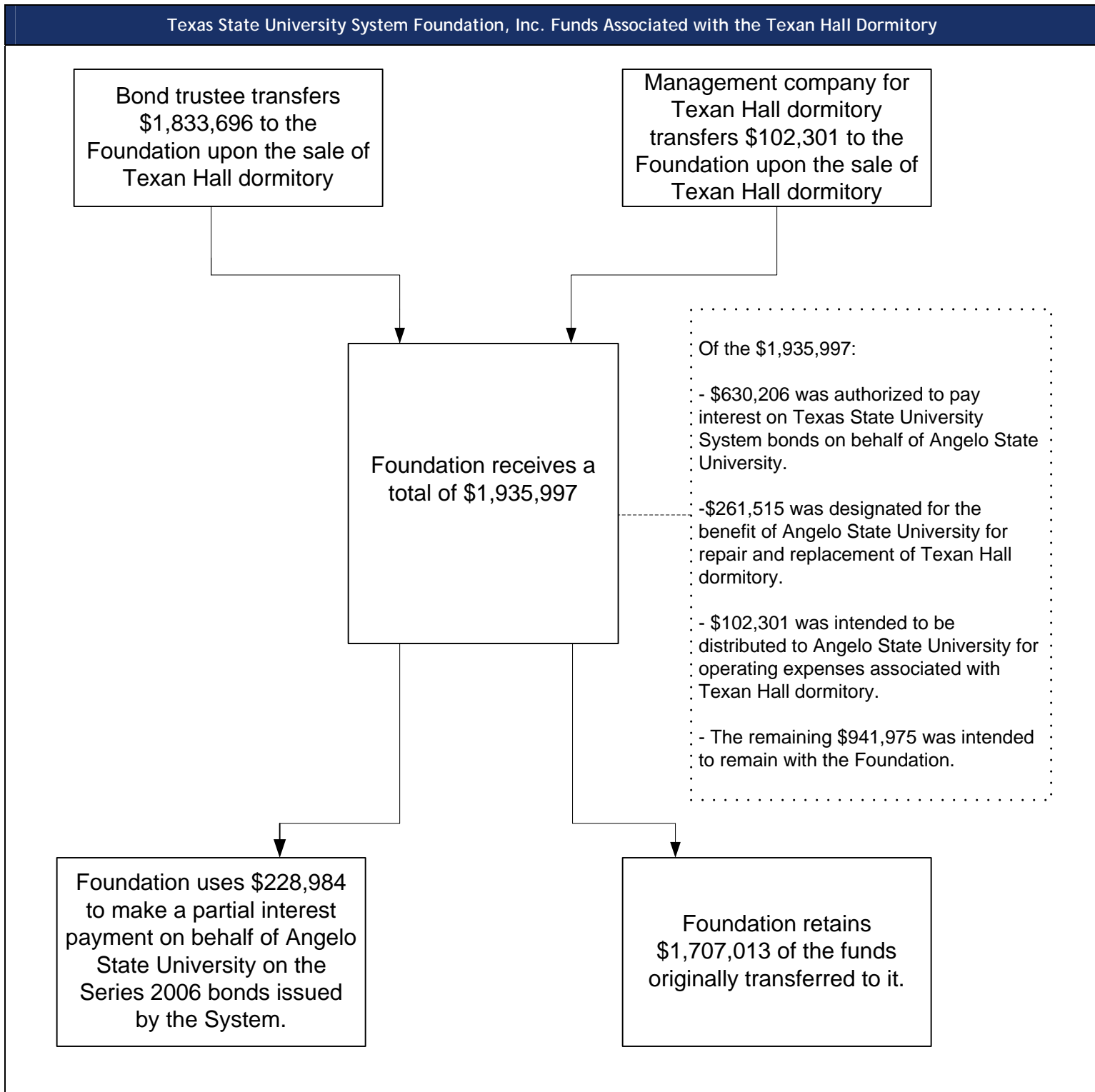


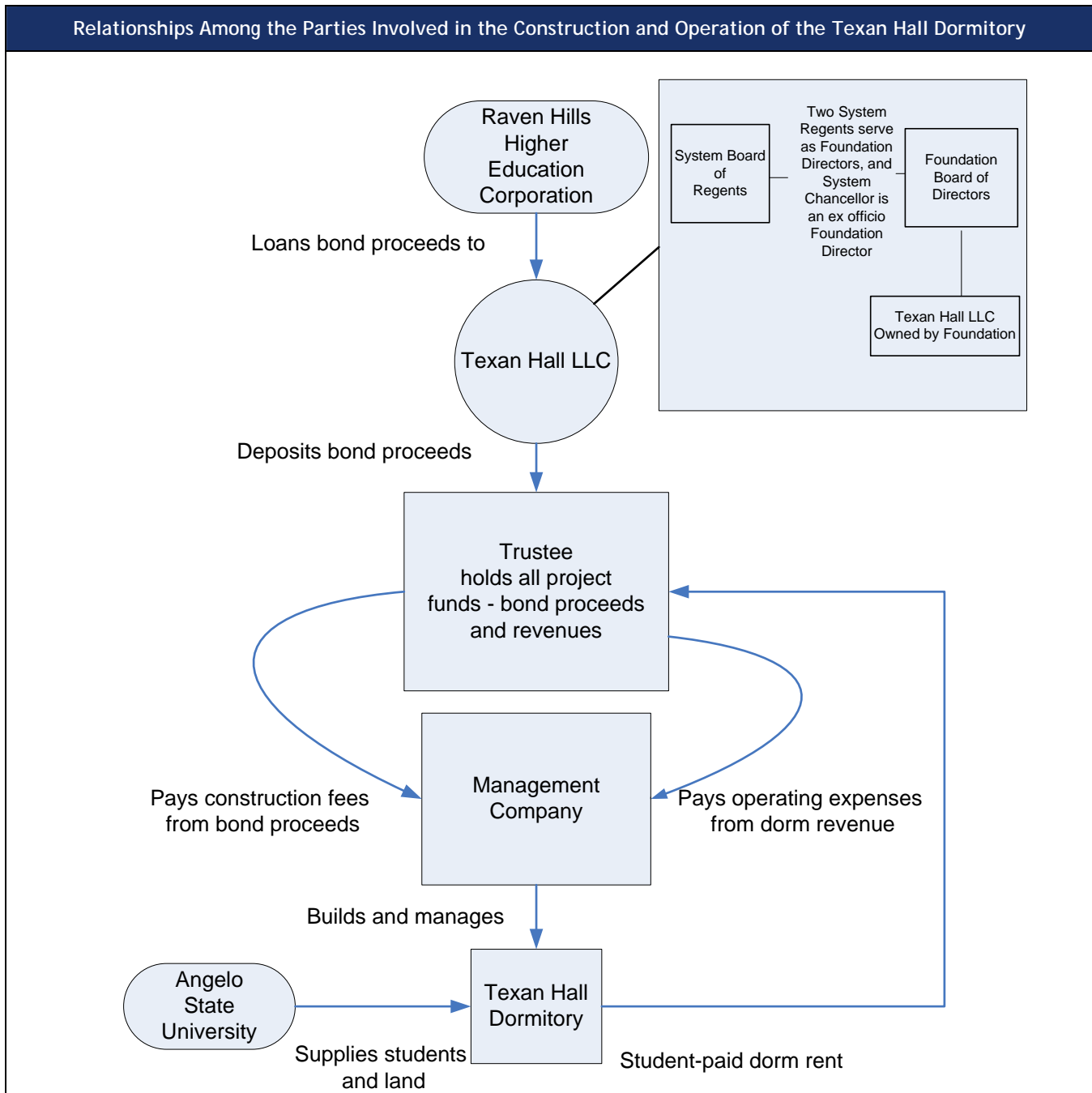
Figure 2



## Parties Involved in the Construction and Operation of the Texan Hall Dormitory

Figure 3 describes the relationships among the parties involved in the construction and operation of the Texan Hall dormitory.

Figure 3



## *Memo from the Texas State University System Chancellor Regarding Foundation Bonds*

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Below is a memo from the Texas State University System chancellor describing the goals of the bond refunding and the intended uses of funds available after the refunding.

### MEMORANDUM

FROM: Chancellor Charles Matthews

TO: Texas State University System Board of Regents  
Texas State University System Foundation Board of Directors

DATE: May 4, 2006

SUBJECT: Refunding of the Texas State University System Foundation bonds

With your support and approval we have made a giant step forward today for our institutions, our System, and our Foundation in refunding the Foundation bonds for all four Limited Liability Companies. I am pleased to inform you that we exceeded our original expectations in present value savings. We were anticipating about a \$9 million savings, as I have mentioned to you before. The final sale will realize \$10.7 in savings. We caught the market at exactly the right time. In addition, the System, the Foundation and the institutions are free from the onerous requirements imposed by the bond documents in one of the most restrictive and expensive transactions in the System's history.

I thought it might be helpful to briefly review, primarily for new Regents and Directors, the original intent of the Board of Regents and the Board of Directors and to show that what we have done today is not only in the System's best interest, but honors the intentions of this Board and previous Boards. It returns the Foundation to its original purpose and does so with a substantial infusion of funds.

#### A. Formation and Initial Purpose of the Foundation (1977)

The Texas State University System Foundation was incorporated as a non-profit corporation in November of 1977. The purpose, as stated in Article IV of the Articles of Incorporation, was **"To advance education through financial support of the operations of the several universities and system office."**

So that there could be no doubt about their intent, the Board of Directors issued a Statement of Purpose shortly after the Articles of Incorporation were filed with the Secretary of State. The Statement again emphasizes that the Foundation was formed to assist the System through financial support of the educational operations at the universities and system office. At the time the Foundation was established there were four institutions in the System, the Lamar campuses were a separate System. Excerpts from Statement of Purpose are included below:

"The recently established Texas State University System Foundation, Inc. strives to assist the Texas State University System in administrative and educational challenges,



which arise for the System in representing the [four] universities of the System. These [four] universities are Angelo State University, Sam Houston State University, Southwest Texas State University, and Sul Ross University. **Through financial support, the Foundation shall work toward the advancement of educational operations at these universities and the System office.**

... “This support shall be allocated for purposes which the State does not appropriate money or for which only limited appropriation has been made.”

For twenty four years the Foundation was dormant.. That changed in 2001.

#### B. A Different Direction (2001)

Several institutions within the Texas State University System began to have serious housing shortages that were not being addressed by the legislature. Enrollment was growing at most campuses, but growth was restricted by the lack of adequate housing. The housing shortage was so acute at Texas State University – San Marcos they had to waive the requirement that certain students live on campus. At Lamar University and Angelo State University, there also were housing shortages, and the housing facilities that existed were over 30 years old and presented fire and health/safety issues. The configuration of these facilities was outdated and not popular with the students. The System office and these institutions began to search for a solution.

The System was faced with old or inadequate housing and no state funding, or any other source of funding, to pay for new housing. American Campus approached the System with a way to provide housing by selling bonds through a higher education authority, authorized under Chapter 53 of the Texas Education Code. The System office decided to use the Raven Hills Higher Education Corporation, established by the City of Huntsville, to issue bonds to finance new facilities. This financing method worked to solve the housing shortage and did not affect the System’s credit rating since, at that time, the rating agencies were considering privatized student housing to be “off balance sheet”.

The Foundation created single member limited liability companies to serve as the borrower for each project financing with the Foundation as the sole member of each company.

With this new plan, the Foundation issued the First Amendment to the Bylaws in June of 2001. The amendment expanded the purposes of the Foundation by authorizing the Foundation to construct or to contract for the construction of student housing and educational facilities, (Resolution 2001-223, June 7-8, 2001, Minutes of the Texas State University System Foundation). September 16, 2001, the Internal Revenue Service issued a letter stating that the amending of the articles of incorporation and bylaws did not affect the Foundation’s tax exempt status.

### C. Problems with the Structure

Four different limited liability companies (LLCs) built the housing facilities. These facilities were popular and were an asset to each campus. However, a number of issues arose which caused difficulties. These issues continued to be a problem for the campuses. Following is a listing of those issues:

1. The rating agencies no longer consider the limited liability companies to be off-balance sheet but consider them in their debt ratio calculations
2. The “non-compete” provisions required in the bond documents by the bond insurers have created problems with campuses that want to build additional housing. The campus must submit substantial documentation, a study and a “consent” fee to the bond insurer before any additional housing can be approved, even if there are waiting lists and high occupancy rates.
3. Any expenditure of funds over the approved budget must be authorized by the bond insurer and the Trustee. When Hurricane Rita damaged Cardinal Village, it was difficult and time consuming to get the Trustee to release insurance funds so that repairs could be paid.
4. Residence life departments at the universities have been burdened with additional reporting and accounting requirements and the need to keep LLC bookkeeping separate from the reports and accounting for the other housing on campus.
5. A number of issues arose between the Residence Life of the universities and the management companies regarding procedures and priorities.
6. The most expensive and financially restrictive requirement of the bond documents is the requirement to maintain several million dollars in various reserve accounts.

Now that the refunding is completed, some of these funds will be held at the System to create what the original Regents and Directors contemplated – a Foundation to advance education through financial support for the operations of the System. Other funds will be used to pay the first year’s debt payment and a reserve for maintenance will be held at the System for each of the components with these housing units.

#### The Solution

After becoming Chancellor last year, I reviewed the operation of the Foundation. I appointed a new Executive Director, a new Reporting Officer and a new Chief Financial Officer. Staff research and analysis of the Foundation convinced us that the existing structure was not in the best interest of the System or the universities. With your permission, we began to look into the possibility of refunding the debt and turning the operation and responsibility for the housing facilities over to each campus.

We have been successful in accomplishing that goal. I believe you deserve credit for providing for the future well being and advancement of educational opportunities in our System as well as providing a sound financial base for providing those opportunities.

Following is a short list of the benefits the System will realize from the refunding:

- Control of the housing units is returned to the institutions
- The System will save \$10.7 million in future interest costs and several million in required reserve accounts
- The Foundation will have a significant financial base for its operations
- All of the requirements imposed by the previous bond documents have been lifted
- The original purpose of the Board of Regents and Board of Directors has been re-instated

Congratulations!

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## *Summary of Foundation Operations*

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The following was summarized from information presented on the Web site of the Texas State University System Foundation, Inc. (Foundation).

The Foundation was established by the Board of Regents of the Texas State University System (System) in 1977 to solicit, accept, acknowledge, and manage gifts in support of the System and its eight institutions.

The Foundation is a private, nonprofit corporation that exists solely for the benefit of the System, functions independently under its own board of directors, and pursues its own investment policies in the management of Foundation funds.

The Foundation's board of directors consists of five individuals appointed by the chair of the System's board of regents: two current members of the board of regents and three former members or former administrators within the System. The System's chancellor is an ex officio member of the Foundation's board.

Currently, the Foundation runs the following two programs:

- The Grow Your Own program supports students in underrepresented groups in completing their doctoral degrees. While completing their degrees, the students also teach at one of the System's component institutions. After graduating, they continue teaching at one of the institutions.
- The Regents' Professor Award provides awards of \$5,000 to full-time faculty members with five consecutive years at a System institution who demonstrate a record of distinguished teaching, an outstanding record of service, and a record of commitment to the college or university.

Table 2 summarizes the Foundation's revenues and expenditures.

Table 2

Revenues and Expenditures of the Foundation			
	Fiscal Year 2006	Fiscal Year 2007	Fiscal Year 2008
<b>Revenues</b>			
Donations	\$ 114,700	\$ 170,150	\$ 180,900
Interest Income	171,807	562,298	368,170
Refunds (insurance, construction, etc.)	568,890	100	150
Reimbursements from Universities	0	0	38,404
Reserve Funds from Trustee	8,073,466	0	0
Returned from Management Company	<u>1,156,767</u>	<u>65,623</u>	<u>0</u>
Totals	\$ 10,085,630	\$ 798,171	\$ 587,624
<b>Expenditures</b>			
Accounting and Auditing Fees	\$ 2,500	\$ 69,928	\$ 4,671
Chancellor's Council	3,324	1,727	0
Fundraising	0	0	68,244
General and Administrative	8,301	62,391	73,792
Regent's Professor Awards	0	30,000	5,000
Salaries and Benefits	1,425	150,840	136,181
Scholarships	2,000	7,100	22,747
Student Housing Expenditures <sup>a</sup>	<u>1,092,654</u>	<u>1,861,952</u>	<u>0</u>
Totals	\$1,110,204	\$2,183,938	\$310,635
<sup>a</sup> Student Housing Expenditures consisted of the following : <ul style="list-style-type: none"> <li>▪ Fiscal year 2006: \$1,092,654 for management fees, repayments to System component institutions, and repairs related to hurricane damage at Cardinal Village (an on-campus student residence hall at Lamar University).</li> <li>▪ Fiscal year 2007: \$1,861,952 payment of debt service on Series 2006 bonds.</li> </ul>			

Source: Unaudited information provided by the Foundation.

***Excerpts from House Bill 3564 (80th Legislature)***

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Excerpts from House Bill 3564 (80th Legislature) are presented below.

SECTION 2. TRANSFER OF GOVERNANCE OF UNIVERSITY. The governance, control, management, and property of Angelo State University are transferred from the board of regents of the Texas State University System to the board of regents of the Texas Tech University System. The transfer is governed by Sections 3 through 7 of this Act.

SECTION 3. POWERS AND DUTIES; RULES AND POLICIES. (a) When the transfer takes effect, the board of regents of the Texas Tech University System shall govern, operate, manage, and control Angelo State University and all land, buildings, facilities, improvements, equipment, supplies, and property belonging to and constituting Angelo State University under the powers and duties conferred by law on the board of regents.

(b) Rules and policies adopted by the board of regents of the Texas State University System to govern the university that are in effect when the transfer takes effect are continued in effect until adopted, repealed, or superseded by the board of regents of the Texas Tech University System. The board of regents of the Texas Tech University System may adopt rules and policies applicable to the university in anticipation of the transfer authorized by this Act.

SECTION 4. CONTRACTS AND CERTAIN WRITTEN OBLIGATIONS. Contracts and written obligations of every kind and character entered into by the board of regents of the Texas State University System for and on behalf of Angelo State University, other than bonds, are considered ratified, confirmed, and validated by the

board of regents of the Texas Tech University System on the effective date of the transfer. In those contracts and written obligations, the board of regents of the Texas Tech University System is substituted for and stands and acts in the place of the board of regents of the Texas State University System to the extent permitted by law.

SECTION 5. EFFECT OF TRANSFER ON STUDENTS AND EMPLOYEES. (a) The transfer of the governance of Angelo State University under this Act does not affect the status of any student of the university.

(b) The transfer of the governance of Angelo State University under this Act does not affect the employment status or accrued benefits of a person employed by the university when the transfer takes effect.

SECTION 6. CURRENT FUNDING. All funds that, on the effective date of the transfer, have been appropriated or dedicated to or are held for the use and benefit of Angelo State University under the governance of the board of regents of the Texas State University System are transferred to the board of regents of the Texas Tech University System for the use and benefit of Angelo State University.

SECTION 7. LEGISLATIVE INTENT; ROLE OF COORDINATING BOARD. It is the intent of the legislature that the transfer of the governance of Angelo State University from the board of regents of the Texas State University System to the board of regents of the Texas Tech University System be made without disrupting the students, faculty, staff, or programs of the university. If those boards of regents are unable to agree as to any matter relating to the transfer, the Texas Higher Education Coordinating Board on application of either board of regents shall resolve the

disagreement consistent with the intent of this section and the provisions of this Act as the coordinating board determines is in the best interest of this state and the institutions under the governance of the boards of regents. The coordinating board may issue any orders or take any other action the coordinating board considers appropriate to enforce this section or to facilitate the transfer consistent with this Act and the intent of the legislature.



## Letter from the Office of the Attorney General

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Below is a letter from the Office of the Attorney General regarding the transfer of Angelo State University to the Texas Tech University System.



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 20, 2008

Kent R. Hance, Chancellor  
Texas Tech University System  
P.O. Box 42013  
Lubbock, TX 79409-2013  
*Via Fax (806) 742-8050 and  
Overnight Delivery*

Charles R. Mathews  
Texas State University System  
208 E. 10th St., Suite 600  
Austin, TX 78701  
*Via Fax (512) 463-1816 and  
Hand-Delivery via OAG Courier*

Re: Legislative Transfer of Angelo State University to Texas Tech University System

Dear Chancellors:

In our December 6, 2007 letter to you we mentioned seven items to be resolved to bring this matter to a conclusion. We are now in a position to determine that these matters have been resolved and we have attached a revised Agreement By and Between the Board of Regents, Texas Tech University System and the Board of Regents, Texas State University System for your signatures.

The first point in our December 6, 2007 letter was for Texas Tech University System to assume responsibility for ASU parity debt. TTUS has so agreed and to accomplish this has proposed that a note be executed establishing the assumption of this debt. These matters are addressed in Article II of the Agreement and in the Form of Note attached thereto.

The second point was that TTUS has the right to refinance, defease or prepay the ASU parity debt and that TSUS will not refinance defease or prepay the ASU parity debt without the consent of TTUS. This is addressed in Section 2.5. TTUS had deleted the phrase that its consent would not be unreasonably withheld from the most recent draft and that language has been retained.

The third point was for TTUS to explore the option of treating the transfer of ASU as an acquisition by TTUS. The Public Finance Division of the Office of the Attorney general has reviewed the legislation and considers this a legislative transfer which would not qualify as an acquisition. Accordingly this provision is not included in the Agreement.

Point four was for prepaid property insurance to be cancelled and any unearned premium to be returned to ASU. This is provided for in Section 3.2.

Point five concerned returning all reserves held by TSUS on behalf of ASU regarding Texan Hall to ASU. This was a provision included in the last previous draft of the Agreement forwarded by TTUS as Section 3.3. This section has been deleted, because we have determined that there are no reserves being held by TSUS that ASU is entitled to.

Kent R. Hance, Chancellor  
Texas Tech University System  
March 20, 2008  
Page 2


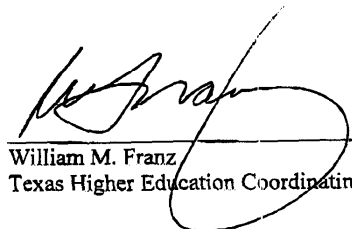
Charles R. Mathews  
Texas State University System

The confusion regarding this item stems from the May 1, 2006 Delivery, Settlement & Closing Procedures on the Revenue Financing System Bonds, Series 2006 dated June 6, 2006 related to the purchase of dormitories by TSUS from the Texas State University System Foundation. This is the closing document for the issuance of the bonds that replaced the prior bonds that had been issued by the Foundation. Page 2 of the Closing Procedures specifies that all remaining bond proceeds from the prior issuance were credited to the new bonds. Accordingly, there are no bond proceeds attributable to ASU that have not previously been accounted for. Also, on pages 4 and 5 of that document, the amounts attributable to the LLCs that constructed and operated the dormitories are listed. These amounts represent revenues generated by the LLCs. At first blush, the references to the Texan Hall LLC might appear to indicate these funds are designated to Angelo State because of the reference to Texan Hall, but they are not. This is a reference to the private LLC established by the Foundation. As part of the purchase of the dormitories from the Foundation, the LLC's retained these revenues. These are represented to be revenues from the operation of the dormitories while they were privately held, long before Angelo State was transferred to TSUS. These are not amounts owed Angelo State. There are no reserves being held for Angelo State and therefore this provision was deleted.

The sixth point provided that all controversies between TTUS and TSUS would be resolved and the attached agreement so indicates and is intended to do so.

Lastly, the seventh point specified signatories to the Agreement and our understanding is that the both Boards of Regents have authorized their respective Chancellors to execute the Agreement.

We appreciate all of your time and the dedication of your staffs in working through this challenging series of issues.

  
\_\_\_\_\_  
David Matfax  
Office of the Attorney General  
\_\_\_\_\_  
William M. Franz  
Texas Higher Education Coordinating Board

## Higher Education Coordinating Board Resolution

Below is a letter from the Higher Education Coordinating Board regarding its resolution of issues surrounding the transfer of Angelo State University to the Texas Tech University System.



### TEXAS HIGHER EDUCATION COORDINATING BOARD

P. O. Box 12788 Austin, Texas 78711

Robert W. Shepard  
CHAIRMAN  
A.W. "Whit" Riter, III  
VICE CHAIRMAN  
Elsaine Mendoza  
SECRETARY OF THE BOARD

April 30, 2008

Laurie Bricker  
Fred W. Heidenfels IV  
Joe B. Hinton  
Brenda Pejovich  
Lyn Bracewell Phillips  
Robert V. Wingo

Kent R. Hance, Chancellor  
Texas Tech University System  
P. O. Box 42013  
Lubbock, Texas 79409-2013

Charles R. Mathews, Chancellor  
Texas State University System  
200 East 10<sup>th</sup> Street, Suite 600  
Austin, Texas 78701-2407

Raymund A. Paredes  
COMMISSIONER  
OF HIGHER EDUCATION

Re: Resolution of Issues Surrounding Legislative Transfer of Angelo State University to Texas Tech University System

512/427-6101  
Fax 512/427-6127

Dear Chancellors:

Web site:  
<http://www.theccb.state.tx.us>

The Texas Higher Education Coordinating Board ("Board"), at its meeting on April 24, 2008, made certain Findings of Fact and issued certain Orders pursuant to Section 7 of House Bill 3564 of the Texas Legislature, 80<sup>th</sup> Regular Session, regarding the transfer of governance of Angelo State University from the Texas State University System to the Texas Tech University System.

Please find enclosed a copy of the motion concerning "Resolution of Issues Relating to the Legislative Transfer of Angelo State University from the Texas State University System to the Texas Tech University System," the "AGREEMENT By and Between THE BOARD OF REGENTS, TEXAS TECH UNIVERSITY SYSTEM And THE BOARD OF REGENTS, TEXAS STATE UNIVERSITY SYSTEM," attached to the Motion, and the CERTIFICATION of the motion and the Board's action.

This concludes the Board's involvement with the transfer of Angelo State University. Since it was a subject of discussion at the meeting, I should note that any claim either party may believe it has against a Foundation affiliated with the other are not addressed by the Board's action since any such claims were not encompassed within the authority granted the Board by the aforementioned legislation.

Should you have any questions or require additional information, please contact David Mattax of the Office of the Attorney General.

Sincerely,

A handwritten signature in black ink, appearing to read "Raymund A. Paredes".

Raymund A. Paredes

GC/mlg

AN EQUAL OPPORTUNITY EMPLOYER

**Resolution of Issues Relating to the Legislative Transfer of Angelo State University from the Texas State University System to the Texas Tech University System**

Upon motion of the Honorable BRENDA RETOVICH, seconded by the Honorable MAURIE BRICKER, the Board made the following findings of fact and issued the following orders, legally binding each of the institutions named below:

Findings of Fact

1. In passing House Bill 3564 (the "Act"), the Texas Legislature (80th Regular Session), transferring governance of Angelo State University ("ASU") from the Texas State University System ("TSUS") to the Texas Tech University System ("Tech"), the legislature authorized the Texas Higher Education Coordinating Board, upon application of either the TSUS or Tech board of regents, to resolve any disagreements in a manner that this Board "determines is in the best interest of this state and the institutions under the governance of the boards of regents" (Section 7).
2. Section 7 of the Act empowers this Board to "issue any orders or take any other action [it] considers appropriate to enforce this section or to facilitate the transfer consistent with this act and the intent of the legislature."
3. In a September 5, 2007 letter to Commissioner of Higher Education Raymund Paredes, TSUS Chancellor Charles R. Matthews requested intervention of this Board in resolving the form of a binding obligation to be given by Tech in order for TSUS to satisfy certain bond covenants, specifically that (notwithstanding TSUS's loss of ASU's revenues) there would be sufficient funds remaining to satisfy existing bond obligations and that Tech, as the new governing board, would legally bind itself for ASU's debt. Tech represented that it considered a resolution of its Board of Regents sufficient to establish this binding obligation. TSUS considered such a resolution insufficient for it to certify to its bondholders that there will be sufficient revenues (after transfer of ASU and its revenues) to meet both annual and remaining (life of its Master Resolution) financial obligations. Failure to so certify may have adverse financial impact upon TSUS or otherwise increase the cost of issuing future bonds for its remaining institutions.
4. With the assistance of this Board's General Counsel and the Texas Office of Attorney General ("OAG"), negotiations between TSUS and Tech were conducted culminating in the Agreement attached hereto. Both parties agree that the Agreement will resolve the issue surrounding the ASU bond indebtedness and that the ASU debt will be included in the Texas Tech System Revenue Financing System as a parity obligation.

5. Tech requests that one issue be left open for future consideration by the Board, specifically a claim that \$1,796,779 transferred from Texan Hall, LLC to the Texas State University System Foundation should be subject to an audit by the State Auditor's Office. TSUS responds that the funds properly belong to the Texas State University System Foundation because the Foundation constructed the dormitory known as Texan Hall for the explicit purpose of generating revenues for the Foundation. In 2002 the Foundation issued bonds to construct several privatized dormitories, including Texan Hall, LLC. The Foundation was the sole shareholder of Texan Hall, LLC. In June 2006 ownership of Texan Hall was transferred from Texan Hall, LLC to TSUS. Texan Hall, LLC retained any revenues that had been generated to date.
6. The Board's General Counsel and the OAG have considered the matter and concluded in a letter dated March 20, 2008, to TSUS and Tech that:

As part of the purchase of the dormitories from the Foundation, the LLC's retained these revenues. These are represented to be revenues from the operation of the dormitories while they were privately held, long before Angelo State was transferred to (Tech). These are not amounts owed Angelo State.

7. Section 4 of HB 3564 provides:

SECTION 4. CONTRACTS AND CERTAIN WRITTEN OBLIGATIONS. Contracts and written obligations of every kind and character entered into by the board of regents of the Texas State University System for and on behalf of Angelo State University, other than bonds, are considered ratified, confirmed, and validated by the board of regents of the Texas Tech University System on the effective date of the transfer.

This provision would ratify the agreement between TSUS and the Foundation that revenues generated by operation of Texan Hall by Texan Hall, LLC would remain assets of Texan Hall, LLC, and as sole shareholder of Texan Hall, LLC, would be revenues of the Foundation.

8. The following Orders and the execution and performance of the Agreement are in the best interest of the institutions under the governance of the boards of regents of TSUS and Tech as well as the overall best interests of the Texas higher education system, in accordance with the statutory directive given to this Board to "provide leadership and coordination for the Texas higher education system . . . through the efficient and effective utilization and concentration of all available resources . . ." (see Texas Education Code, section 61.002(a)).

## Responses from the Foundation



### THE TEXAS STATE UNIVERSITY SYSTEM FOUNDATION, Inc.

200 E. 10<sup>th</sup> Street, Suite 600  
Austin, Texas 78701-2407

Telephone: (512) 463-1808  
FAX: (512) 463-1816

March 12, 2009

#### DIRECTORS

**John E. Dudley**  
*Comanche, Chairman*  
State Auditor's Office  
Attention: Ms. Kristin Alexander  
Robert E. Johnson Building

**Dan Matheson**  
*Austin*  
1501 N. Congress Avenue  
Austin, Texas 78701

**Dr. William C. Nylín**  
*Beaumont*

**Greg Wilkinson**  
*Plano*

*Open*

#### **The Texas State University System Foundation, Inc. (Foundation) Management Response for the "Audit Report on The Texas State University System Foundation and Transactions Involving the Texan Hall Dormitory at Angelo State University":**

#### EXECUTIVE DIRECTOR

**Diane Corley**  
*Austin*

We will comply with the recommendations of the State Auditor's Office and provide our management response below. We recognize that the audit involved review of very complex financial transactions involving multiple entities and contracted experts.

*House Bill 3564*, the bill transferring Angelo State University to the Texas Tech University System (Texas Tech), gave the Texas Higher Education Coordinating Board the authority to resolve any disagreement between the System and Texas Tech with regard to the transfer of Angelo State University. The transfer occurred September 1, 2007, over a year after the refunding of the bonds for Texan Hall in June of 2006, so the issue was known to all parties. We believe the following four (4) bullet points supply additional critical information regarding the transactions addressed in the audit report:

- *House Bill 3564, section 7*, authorizes the Texas Higher Education Coordinating Board (Coordinating Board) to resolve disputes between the System and the Texas Tech University System (Texas Tech) with regard to the transfer. The Coordinating Board requested advice from the Texas Office of Attorney General

In support of The Texas State University System

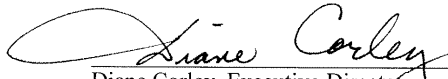
(OAG). The OAG's Business Litigation Division reviewed the documents and transactions in this case before seeking and receiving additional review and scrutiny of those documents and transactions by the OAG's Charitable Trusts Division, the unit that oversees the actions of private foundations in the state to assure integrity in the handling of funds. Upon conclusion of these reviews, the OAG and the Coordinating Board's General Counsel concluded that that "[t]here are no reserves being held for Angelo State . . ." (see Appendix 8);

- Upon the legal advice of the OAG and its General Counsel, and after reviewing the matter both by committee and the full Board, the Coordinating Board issued an order that the funds were not owed to Angelo State University (see Appendix 9), and,
- *House Bill 3564, section 4*, ratified all contracts involving Angelo State University occurring before the September 1, 2007 transfer date. The Foundation's sale of the dormitory to the System closed on June 8, 2006, more than a year prior to the transfer. The OAG and the Coordinating Board all recognized that the dormitory funds in question were "revenues from the operation of the dormitories while they were privately held, long before Angelo State was transferred to (Texas Tech)" (see above referenced documents).
- On December 19, 2008, Texas Tech signed an *Agreement*, (approved by the Coordinating Board on April 30, 2008) agreeing that "This agreement resolves all issues arising from the transfer of the governance, control, management and property of ASU from TSUS to TEXAS TECH pursuant to H.B. 3564(80<sup>th</sup> Regular Session)." (see attached *Agreement*, with a December 22, 2008 transmittal letter from the Texas Tech General Counsel.)

We will implement the State Auditor's Office recommendations to develop policies for maintaining accounting records, and for monitoring contracts and financial transactions, and will also publish an annual financial report.

The person responsible for ensuring implementation of the recommendations is Diane Corley, Executive Director. The planned completion date for the policies and procedures is September 15, 2009. The Foundation has issued an RFP to procure accounting services in order to prepare annual financial statements, and has established controls to monitor financial transactions by requiring a review by two or more individuals upon the initiation of each transaction and recording of the transaction in the accounting records.

In support of The Texas State University System

  
Diane Corley, Executive Director  
The Texas State University System, Inc.

Attachment

In support of The Texas State University System





TEXAS TECH UNIVERSITY SYSTEM  
Office of the General Counsel

December 22, 2008

Fernando C. Gomez  
Vice Chancellor & General Counsel  
Texas State University System  
Thomas J. Rusk Building  
200 East 10<sup>th</sup> Street; Suite 600  
Austin, TX 78701-2407

**SUBJECT:** TSUS & TTUS Agreement

Dear Fernando,

Following numerous conversations with the Governor's office, and discussions with the Texas Tech University System Board of Regents on December 12, 2008, Chancellor Hance determined that signing the agreement approved by the Texas Higher Education Coordinating Board on April 30, 2008 is necessary to resolve this matter. Therefore, enclosed you will find a signed copy of the referenced agreement.

Further, another signed Refunding Note, Series 2008, previously furnished to you on September 30, 2008, is enclosed.

Sincerely,

  
Pat Campbell

Box 42021 | Lubbock, Texas 79409-2021 | T 806.742.2155 | F 806.742.2330

An EEO/Affirmative Action Institution

RECEIVED

JAN 0 8 2009

T.S.U.S. OFFICE

xc: Governor's Office, David Cabrales  
Lieutenant Governor  
Speaker of the House  
Attorney General's Office, Chief of Public Finance Division, Tom Griess  
Texas Higher Education Coordinating Board  
General Counsel, William Franz  
Robert Duncan  
Drew Darby  
Board of Regents, TTUS System  
Chancellor Hance  
Jim Brunjes  
Paul Braden

PC/anp/718

**AGREEMENT**

**By and Between**

**THE BOARD OF REGENTS, TEXAS TECH UNIVERSITY SYSTEM**

**And**

**THE BOARD OF REGENTS, TEXAS STATE UNIVERSITY SYSTEM**

70159877.5

*EXHIBIT A*

## AGREEMENT

This Agreement is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2008, by and between the BOARD OF REGENTS, TEXAS TECH UNIVERSITY SYSTEM ("TEXAS TECH") and the BOARD OF REGENTS, TEXAS STATE UNIVERSITY SYSTEM ("TSUS").

## RECITALS

**WHEREAS**, on August 13, 1998, TSUS adopted the "Master Resolution Establishing The Texas State University System Revenue Financing System" (the "TSUS Master Resolution") to establish a system wide Revenue Financing System (the "TSUS Revenue Financing System") and thereby committed the Pledged Revenues of all TSUS Members to the payment of the TSUS Parity Debt (hereinafter defined) issued under the TSUS Master Resolution (any capitalized terms used in these Recitals are effective as to this whole Agreement and if such terms are not otherwise defined in this Agreement, they shall have the meaning given in the TSUS Master Resolution); and

**WHEREAS**, the TSUS Board currently has TSUS Parity Debt which includes approximately \$53,015,628 (aggregate principal amount) in ASU Parity Debt (hereinafter defined) which was issued for the benefit of, and payable by Angelo State University ("ASU"), a TSUS Member at the time such debt was incurred; and

**WHEREAS**, the Texas Legislature (80<sup>th</sup> Regular Session) passed H.B. 3564 (the "Act"), and pursuant to the Act, the governance, control, management and property of ASU were transferred from TSUS to TEXAS TECH, effective September 1, 2007; and

**WHEREAS**, pursuant to the TSUS Master Resolution, the TSUS Board has covenanted with and legally bound itself to the owners of TSUS Parity Debt that a TSUS Member would not be removed from the TSUS Revenue Financing System unless the following conditions are met:

- (1) the TSUS Board specifically finds (based upon an officer's certificate) that, after the release of the TSUS Member or portion thereof, the TSUS Board will have sufficient funds during each Fiscal Year in which TSUS Parity Debt shall thereafter be Outstanding to meet the financial obligations of TSUS, including sufficient Pledged Revenues to satisfy the Annual Debt Service Requirements of the TSUS Revenue Financing System and to meet all financial obligations of the TSUS Board relating to the TSUS Revenue Financing System; and
- (2) the TSUS Board shall have received an opinion of counsel which shall state that such release will not affect the status for Federal Income Tax purposes of interest on any Outstanding TSUS Parity Debt and that all conditions precedent provided in the TSUS Master Resolution or any Supplement relating to such release have been complied with; and
- (3) if the TSUS Member or portion thereof to be released from the TSUS Revenue Financing System is to no longer be under the governance and control of the TSUS Board, the TSUS Board must receive a binding obligation from the new governing

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body of the withdrawing TSUS Member or the portion thereof being withdrawn, obligating said governing body to make payments to the TSUS Board at the time and in the amounts equal to said TSUS Member's Annual Obligation and to pay or discharge said withdrawing TSUS Member's Direct Obligation, or, in the case of a portion of a Member being withdrawn, the proportion of the TSUS Member's Annual Obligation and Direct Obligation, as the case may be, attributable to the withdrawing TSUS Member, and

**WHEREAS**, pursuant to a resolution adopted on September 11, 2007 by the TEXAS TECH Board (the "9/11 Resolution"), TEXAS TECH has obligated itself, from funds or balances derived from or attributable to ASU, to make payments on the ASU Parity Debt at the times and in the amounts equal to the ASU Annual Obligation and to pay or discharge the ASU Direct Obligation and by this Agreement, the parties acknowledge that TEXAS TECH has assumed the payment of these obligations; and

**WHEREAS**, in the interests of the State of Texas generally and on a basis consistent with the Legislative intent that the transfer of the governance of ASU be made without disruption, TEXAS TECH has agreed to take steps to refund its obligation under the 9/11 Resolution by issuing a note secured by its revenue financing system as permitted by applicable law, including Chapter 1207 of the Government Code ("Chapter 1207").

**NOW, THEREFORE**, in consideration of the mutual covenants, conditions and agreements which follow, the parties hereby agree, as follows:

#### **ARTICLE I** **DEFINITIONS**

**Section 1.1. Definitions.** The following terms as used in this Agreement shall have the following meanings, unless the context specifically indicates otherwise. Any capitalized terms not otherwise defined herein have the meaning given in the TSUS Master Resolution.

**"ASU Parity Debt"** means \$53,015,628 of outstanding TSUS Parity Debt issued for the benefit and payable by ASU as shown on Schedule A to the Note.

**"ASU Tuition Revenue Bonds"** means that portion of the ASU Parity Debt issued pursuant to specific statutory authorization and the debt service of which is appropriated by the State. As of the date of this Agreement, the principal amount of outstanding ASU Tuition Revenue Bonds is \$31,164,640.

**"State"** means the State of Texas.

**"TSUS Board"** means the Board of Regents, Texas State University System, its successors and assigns, and any person or entity duly authorized to act on behalf of such board.

**"TSUS Member"** means those Members as defined in the TSUS Master Resolution.

**"TSUS Parity Debt"** means the currently outstanding Parity Debt under the TSUS Master Resolution.

“**TSUS Parity Debt Commitment**” means the commitment of the TSUS Board made pursuant to the TSUS Master Resolution to pay the Annual Obligation as defined in the TSUS Master Resolution on all currently outstanding TSUS Parity Debt from any lawfully available funds of any TSUS Member to the extent funds are not available from the particular TSUS Member of the TSUS Revenue Financing System for which the TSUS Parity Debt was issued.

“**TEXAS TECH Board**” means the Board of Regents, Texas Tech University System, its successors and assigns, and any person or entity duly authorized to act on behalf of such board.

“**TEXAS TECH Master Resolution**” means the master resolution establishing the revenue financing system under the authority and responsibility of the TEXAS TECH Board as adopted on October 21, 1993, together with the resolutions adopted November 8, 1996 and on August 22, 1997.

“**TEXAS TECH Revenue Financing System**” means the financing system established pursuant to the TEXAS TECH Master Resolution.

“**TEXAS TECH Parity Obligations**” means all debt of the TEXAS TECH Board which is issued as a parity obligation in accordance with the terms of the TEXAS TECH Master Resolution and secured by the pledge of the TEXAS TECH Pledged Revenues.

“**TEXAS TECH Pledged Revenues**” means the revenues pledged to TEXAS TECH Parity Obligations pursuant to and as defined in the TEXAS TECH Master Resolution.

## **ARTICLE II BINDING OBLIGATION**

**Section 2.1. The Note.** As permitted by applicable law (including Chapter 1207) and subject to: (i) adoption by Texas Tech of a supplemental resolution to the TEXAS TECH Master Resolution showing compliance with the provisions related to issuance of additional TEXAS TECH Parity Obligations; (ii) the approval of the Attorney General of the State; and (iii) the approval or exemption letter from the Texas Bond Review Board, the TEXAS TECH Board hereby agrees to execute a note (the “Note”) in substantially the form attached hereto and made a part hereof as Exhibit A. The Note shall be issued as a TEXAS TECH Parity Obligation and secured by a pledge of the TEXAS TECH Pledged Revenues. The aggregate of all payments to the TSUS Board by the TEXAS TECH Board pursuant to the terms of the Note shall not exceed the TSUS Parity Debt Commitment that is attributable to the ASU Parity Debt less any amount that is attributable to ASU Parity Debt that is assumed, refunded or defeased in accordance with the terms of Section 2.5 of this Agreement. TEXAS TECH and TSUS shall use their respective best efforts to pass such additional resolutions and execute such additional certificates, instruments or documents as may be reasonably requested by TEXAS TECH’s bond counsel in connection with the approval of the Note by the State’s Attorney General.

**Section 2.2. Redemption.** The Note may be redeemed at any time, at the option of the TEXAS TECH Board, with funds derived from any available and lawful source, in whole or in part, at a redemption price equal to the principal amount of the portion of the Note being redeemed plus accrued interest to the date fixed for redemption.

**Section 2.3. Note Payments.** Subject to the terms of Section 2.5 hereof, the TSUS Board agrees to use all payments received in connection with or derived from the Note to pay debt service on the ASU Parity Debt as it becomes due and payable either at maturity or redemption. The Note may not be transferred or assigned by the TSUS Board without the prior written consent of TEXAS TECH.

**Section 2.4. Compliance with TSUS Master Resolution.** Upon receipt of the: (i) TEXAS TECH supplemental resolution related to the Note; (ii) Attorney General approval; and (iii) letter of the Texas Bond Review Board, the TSUS Board shall promptly comply with the other provisions or conditions required by the TSUS Master Resolution in order for the transfer of ASU (as authorized by the Act) to be in compliance with the TSUS Master Resolution.

**Section 2.5. Permissible Defeasance of ASU Parity Debt.** At its option and at any time, the TEXAS TECH Board, through the TEXAS TECH Revenue Financing System, may assume, refund or defease all or a portion of the ASU Parity Debt should the TEXAS TECH Board, in its sole discretion, determine that such assumption, refunding or defeasance is beneficial for both TEXAS TECH and ASU, including a refinancing which may result in a debt service cost to TEXAS TECH and ASU; provided such assumption, refund, or defeasance does not result in additional costs to TSUS. In the event that the TEXAS TECH Board assumes, refunds or defeases all or a portion of the ASU Parity Debt, an amount of the Note equal to the amount of ASU Parity Debt so assumed, refunded or defeased shall be immediately cancelled and discharged upon the effective date of such assumption, refunding or defeasance. The TSUS Board shall use its best efforts to cooperate in, and take all actions reasonably requested of it by the TEXAS TECH Board in connection with, any assumption, refunding or defeasance of ASU Parity Debt in accordance with this Section. The TSUS Board shall not refinance, refund, defease or prepay the ASU Parity Debt without the prior written consent of the TEXAS TECH Board, which consent shall not be unreasonably withheld.

**Section 2.6. Refunding of ASU Annual and Direct Obligations.** The Note is being issued for the purpose of an exchange refunding, with a TEXAS TECH Parity Obligation being delivered to TSUS in exchange for TSUS's release of TEXAS TECH's obligations under the 9/11 Resolution, which obligations are payable solely from funds or balances derived from or attributable to ASU. Upon execution of the Note and approval thereof by the Attorney General, TEXAS TECH's obligation to make payments pursuant to the 9/11 Resolution and any contractual obligation of ASU to make payments to TSUS under the TSUS Master Resolution, including any financing agreement executed by ASU pursuant to Section 4(k) of TSUS Master Resolution, are hereby released and extinguished and replaced by TEXAS TECH's obligations set forth in the Note.

### **ARTICLE III TRANSFER OF CERTAIN REVENUES**

**Section 3.1. Transfers.** The Act provides that all funds that, on the effective date of the transfer of ASU to TEXAS TECH, have been appropriated or dedicated to or are held for the use and benefit of ASU under the governance of the TSUS Board are transferred to the TEXAS TECH Board for the use and benefit of ASU. Without limiting the foregoing, the TSUS Board agrees to cooperate with TEXAS TECH and promptly take such actions as are reasonable and





demands, requests, or other communications made by either party to the other which are required or permitted by the provisions of this Agreement shall be in writing.

**Section 5.2. No Waiver of Rights.** No failure of any party to exercise any power given hereunder or to insist upon strict compliance by each party with its undertakings, duties and obligations hereunder or under the Act, and no custom or practice of the parties hereto at variance with the provisions hereof shall constitute a waiver of a party's right to demand exact compliance with the provisions contained in this Agreement or the Act

**Section 5.3. Rights Are Cumulative.** All rights, powers, and privileges conferred herein upon both parties hereto shall be cumulative.

**Section 5.4. Provisions are Binding Upon Assigns.** It is mutually covenanted, understood and agreed by and between the parties hereto, that each of the provisions of this Agreement shall apply and extend to, be binding upon and inure to the benefit or detriment of not only the parties hereto, but also the legal representatives, successors and permitted assigns of the parties hereto.

Whenever a reference to the parties hereto is made, such reference shall be deemed to include the legal representatives, successors and assigns of said party, the same as if in each case expressed. This Agreement cannot be assigned without the express written consent of the parties hereto.

**Section 5.5. Dispute Resolution and Applicable Law.** In the event the parties disagree or have a dispute with respect to this Agreement, they shall refer the disagreement or dispute to the Texas Higher Education Coordinating Board (as required by the Act) to be assisted and advised by the Texas Attorney General (as required by the Texas Constitution). This Agreement and all obligations of the parties created by this Agreement shall be governed, construed, performed and enforced in accordance with the laws of the State.

**Section 5.6. Legal Construction.** If any one or more of the provisions in this Agreement are for any reason held by a court to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability will not affect any other provision of the agreement, which will be construed as if it had not included the invalid, illegal, or unenforceable provision. This Agreement shall be deemed to have been co-authored by both parties and shall not be construed more strictly against one party versus the other.

**Section 5.7. Section Captions are to be Disregarded.** The captions of the numbered sections of this Agreement are for the purposes of identification and convenience only and are to be completely disregarded in construing this Agreement.

**Section 5.8. Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed original and all of which, when taken together, shall constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to and may be appended to, any other counterpart.

**Section 5.9. Preservation of Tax Exemption.** TEXAS TECH and TSUS agree to take any action with respect to the facilities financed with the ASU Parity Debt necessary to assure, or

to refrain from any action that would adversely affect, the exemption of interest on any ASU Parity Debt from gross income of the holders thereof for federal income tax purposes.

**Section 5.10. Sole Agreement.** This Agreement constitutes the parties' sole agreement, and supersedes any prior understanding or written or oral agreements between the parties, with respect to the subject matter hereof.

**Section 5.11. Amendment.** No amendment, modification, or alteration of this Agreement is binding unless in writing, dated subsequent to the date of this Agreement, and duly executed by the parties.

**Section 5.12. Default and Remedies.** In the event of default by either party to the covenants and obligations under this Agreement, the other party is authorized to require appropriate officials to carry out, respect, or enforce the covenants and obligations of the parties in this Agreement by all legal and equitable means, including, but not necessarily limited to, the use and filing of mandamus proceedings in any court of competent jurisdiction in Travis County, Texas.


**Section 5.13. Recitals.** Recitals set forth in the preamble of this Agreement are incorporated by reference herein and shall have the same force and effect as if set forth in this Section.

**Section 5.14 Severability.** If, for any reason, a portion(s) of this Agreement is (are) found to be illegal or unconstitutional, the same shall be severed and the remainder of the Agreement be enforced as written.

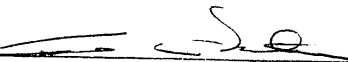
**Section 5.15. Resolution of All Issues.** This agreement resolves all issues arising from the transfer of the governance, control, management and property of ASU from TSUS to TEXAS TECH pursuant to H.B. 3564 (80<sup>th</sup> Regular Session).

**WITNESS THE EXECUTION OF THIS AGREEMENT TO BE EFFECTIVE AS OF THE DAY FIRST ABOVE WRITTEN.**

TEXAS TECH UNIVERSITY SYSTEM

  
\_\_\_\_\_  
Kent R. Hance  
Chancellor 12-14-08

TEXAS STATE UNIVERSITY SYSTEM

By: 

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Charles R. Mathews  
Chancellor

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REFUNDING NOTE, SERIES 2008

BOARD OF REGENTS OF TEXAS TECH UNIVERSITY SYSTEM  
REVENUE FINANCING SYSTEM

September 12, 2008

NO. 1

**PRINCIPAL  
AMOUNT  
\$53,015,628**

REGISTERED OWNER: TEXAS STATE UNIVERSITY SYSTEM

PRINCIPAL AMOUNT: FIFTY THREE MILLION FIFTEEN THOUSAND SIX  
HUNDRED TWENTY-EIGHT DOLLARS

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THE BOARD OF REGENTS OF TEXAS TECH UNIVERSITY SYSTEM ("TEXAS TECH"), being an agency and political subdivision of the State of Texas, hereby promises to pay to TEXAS STATE UNIVERSITY SYSTEM ("TSUS"), being an agency and political subdivision of the State of Texas, on March 15 of each year specified in, and in the principal installments set forth on, attached Schedule A.

TEXAS TECH promises to pay interest on the unpaid principal amount thereof, in the amounts specified on attached Schedule A; with interest being payable on September 15, 2008, and semiannually on each March 15 and September 15 thereafter to the date of payment of the final principal installment specified in Schedule A. The interest rate associated with such interest payment amounts is within applicable legal limits.

THE PRINCIPAL OF AND INTEREST ON this Note are payable in lawful money of the United States of America, without exchange or collection charges, solely from funds of TEXAS TECH required by the resolution authorizing the issuance of this Note to be on deposit with TEXAS TECH for such purpose as hereinafter provided. The payment of principal and interest on this Note in the amounts set forth on Schedule A shall be made to TSUS on each payment date, in immediately available funds, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. Any accrued interest due upon the redemption of this Note prior to maturity as provided herein shall be paid to TSUS upon presentation and surrender of this Note for redemption and payment at TEXAS TECH's offices. TEXAS TECH covenants with TSUS that on or before each principal payment date and interest payment date for this Note it will make available the amounts required to provide for the payment, in immediately available funds, of all principal of and interest on the Note, when due. Terms used herein and not otherwise defined have the meaning given in the Thirteenth Supplemental Resolution to the Master Resolution adopted on September 12, 2008 and the Master Resolution referred to therein (collectively, the "Bond Resolution").

THIS NOTE is being issued pursuant to applicable laws of the State of Texas, including Chapter 1207 of the Government Code, an Agreement By and Between TEXAS TECH and TSUS dated September 12, 2008, and the Bond Resolution. This Note is a contract made under and shall be construed in accordance with and governed by the laws of the State of Texas. Upon repayment of this Note, either at maturity or prior redemption, this Note shall be cancelled and of no further force or effect.

THIS NOTE may be redeemed at any time, at the option of TEXAS TECH, with funds derived from any available and lawful source, in whole or in part, at a redemption price equal to the principal amount of the portion of the Note being redeemed plus accrued interest to the date fixed for redemption.

IF THE DATE for the payment of the principal of or interest on this Note shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the City of New York, New York, are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

THIS NOTE may not be transferred or assigned by TSUS without the prior written consent of TEXAS TECH.

THIS NOTE is being issued in registered form to TSUS and any permitted transfer of the Note may be registered on books maintained for that purpose by or on behalf of TEXAS TECH. TSUS shall be deemed and treated by TEXAS TECH as the absolute owner for all purposes, including payment and discharge of liability upon this Note to the extent of such payment, and, to the extent permitted by law, TEXAS TECH shall not be affected by any notice to the contrary.

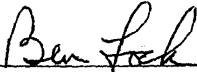
IT IS HEREBY certified, recited, and covenanted that this Note has been duly and validly authorized, issued, and delivered; that all acts, conditions, and things required or proper to be performed, exist, and be done precedent to or in the authorization, issuance, and delivery of this Note have been performed, existed, and been done in accordance with law; that this Note is issued as a TEXAS TECH Parity Obligation under the Bond Resolution, and that the interest on and principal of this Note, together the other outstanding TEXAS TECH Parity Obligations are equally and ratably secured by and payable from a lien on and pledge of the TEXAS TECH Pledged Revenues, subject only to the provisions of, and the lien on and pledge of certain TEXAS TECH Pledged Revenues to, any outstanding Prior Encumbered Obligations of TEXAS TECH.


TSUS hereof shall never have the right to demand payment of this Note or the interest hereon out of any funds raised or to be raised by taxation or from any source whatsoever other than specified in the Bond Resolution.

BY BECOMING the registered owner of this Note, TSUS hereby acknowledges all of the terms and provisions of the Bond Resolution, agrees to be bound by such terms and provisions, acknowledges that the Bond Resolution is duly recorded and available for inspection in the

official minutes and records of TEXAS TECH, and agrees that the terms and provisions of this Note and the Bond Resolution constitute a contract between TSUS and TEXAS TECH.

IN WITNESS WHEREOF, TEXAS TECH has caused this Note to be signed with the manual or facsimile signature of the Chair or Vice Chair of TEXAS TECH and countersigned with the manual or facsimile signature of the Secretary or Assistant Secretary of TEXAS TECH, and has caused the official seal of TEXAS TECH to be duly impressed, or placed in facsimile, on this Note.

  
\_\_\_\_\_  
Ben Lock, Secretary  
Board of Regents  
Texas Tech University System

  
\_\_\_\_\_  
F. Scott Dueser, Chair  
Board of Regents  
Texas Tech University System

(BOARD SEAL)

**Schedule A**

Date	Principal	Capitalized Interest	Accrued Interest	Interest	Debt Service	8/31 Debt Service
09/15/2008	0.00	0.00	0.00	1,309,393.99	1,309,393.99	0.00
03/15/2009	3,267,072.71	0.00	0.00	1,309,393.99	4,576,466.70	5,885,860.69
09/15/2009	0.00	0.00	0.00	1,231,862.47	1,231,862.47	0.00
03/15/2010	3,466,050.25	0.00	0.00	1,231,862.47	4,697,912.72	5,929,775.19
09/15/2010	0.00	0.00	0.00	1,149,005.20	1,149,005.20	0.00
03/15/2011	3,662,035.10	0.00	0.00	1,149,005.20	4,811,040.30	5,960,045.50
09/15/2011	0.00	0.00	0.00	1,065,768.30	1,065,768.30	0.00
03/15/2012	3,839,702.16	0.00	0.00	1,065,768.30	4,905,470.46	5,971,238.76
09/15/2012	0.00	0.00	0.00	970,787.79	970,787.79	0.00
03/15/2013	4,036,062.85	0.00	0.00	970,787.79	5,006,850.64	5,977,638.43
09/15/2013	0.00	0.00	0.00	868,936.89	868,936.89	0.00
03/15/2014	4,242,332.73	0.00	0.00	868,936.89	5,111,269.82	5,980,206.51
09/15/2014	0.00	0.00	0.00	761,879.93	761,879.93	0.00
03/15/2015	3,173,073.67	0.00	0.00	761,879.93	3,934,953.60	4,696,833.53
09/15/2015	0.00	0.00	0.00	681,501.58	681,501.58	0.00
03/15/2016	3,364,331.65	0.00	0.00	681,501.58	4,045,833.23	4,727,334.81
09/15/2016	0.00	0.00	0.00	597,109.06	597,109.06	0.00
03/15/2017	3,525,265.14	0.00	0.00	597,109.06	4,122,374.20	4,719,483.26
09/15/2017	0.00	0.00	0.00	508,547.60	508,547.60	0.00
03/15/2018	3,710,463.85	0.00	0.00	508,547.60	4,219,011.45	4,727,559.05
09/15/2018	0.00	0.00	0.00	415,332.96	415,332.96	0.00
03/15/2019	1,602,266.72	0.00	0.00	415,332.96	2,017,599.68	2,432,932.64
09/15/2019	0.00	0.00	0.00	375,276.29	375,276.29	0.00
03/15/2020	1,678,573.67	0.00	0.00	375,276.29	2,053,849.96	2,429,126.25
09/15/2020	0.00	0.00	0.00	333,311.94	333,311.94	0.00
03/15/2021	1,767,135.88	0.00	0.00	333,311.94	2,100,447.82	2,433,759.76
09/15/2021	0.00	0.00	0.00	290,548.72	290,548.72	0.00
03/15/2022	1,851,261.90	0.00	0.00	290,548.72	2,141,810.62	2,432,359.34
09/15/2022	0.00	0.00	0.00	245,750.00	245,750.00	0.00
03/15/2023	695,000.00	0.00	0.00	245,750.00	940,750.00	1,186,500.00
09/15/2023	0.00	0.00	0.00	228,375.00	228,375.00	0.00
03/15/2024	730,000.00	0.00	0.00	228,375.00	958,375.00	1,186,750.00
09/15/2024	0.00	0.00	0.00	210,125.00	210,125.00	0.00
03/15/2025	770,000.00	0.00	0.00	210,125.00	980,125.00	1,190,250.00
09/15/2025	0.00	0.00	0.00	190,875.00	190,875.00	0.00
03/15/2026	800,000.00	0.00	0.00	190,875.00	990,875.00	1,181,750.00
09/15/2026	0.00	0.00	0.00	170,875.00	170,875.00	0.00
03/15/2027	840,000.00	0.00	0.00	170,875.00	1,010,875.00	1,181,750.00
09/15/2027	0.00	0.00	0.00	149,875.00	149,875.00	0.00
03/15/2028	885,000.00	0.00	0.00	149,875.00	1,034,875.00	1,184,750.00
09/15/2028	0.00	0.00	0.00	127,750.00	127,750.00	0.00
03/15/2029	925,000.00	0.00	0.00	127,750.00	1,052,750.00	1,180,500.00
09/15/2029	0.00	0.00	0.00	104,625.00	104,625.00	0.00
03/15/2030	975,000.00	0.00	0.00	104,625.00	1,079,625.00	1,184,250.00
09/15/2030	0.00	0.00	0.00	80,250.00	80,250.00	0.00
03/15/2031	1,015,000.00	0.00	0.00	80,250.00	1,095,250.00	1,175,500.00
09/15/2031	0.00	0.00	0.00	54,875.00	54,875.00	0.00
03/15/2032	1,070,000.00	0.00	0.00	54,875.00	1,124,875.00	1,179,750.00
09/15/2032	0.00	0.00	0.00	28,125.00	28,125.00	0.00
03/15/2033	1,125,000.00	0.00	0.00	28,125.00	1,153,125.00	1,181,250.00
09/15/2033	0.00	0.00	0.00	0.00	0.00	0.00
03/15/2034	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total</b>	<b>53,015,628.28</b>	<b>0.00</b>	<b>0.00</b>	<b>24,301,525.44</b>	<b>77,317,153.72</b>	<b>77,317,153.72</b>

COMPTROLLER'S REGISTRATION CERTIFICATE:

REGISTER NO. \_\_\_\_\_

I hereby certify that this Note has been examined, certified as to validity, and approved by the Attorney General of the State of Texas, and that this Note and the proceedings authorizing its issuance have been registered by the Comptroller of Public Accounts of the State of Texas.

Witness my signature and seal this

\_\_\_\_\_  
Comptroller of Public Accounts  
of the State of Texas

\_\_\_\_\_  
(COMPTROLLER'S SEAL)



## ***Representations Requested of and Received from the Texas State University System***

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Below are the representations that the State Auditor's Office requested that the Texas State University System provide.

**REPRESENTATION LETTER**  
(System Letterhead)

(Date)

State Auditor's Office  
ATTN: Kristin Alexander  
P.O. Box 12067  
Austin, Texas 78711-2067

The following representations are presented in connection with your examination of the Texas State University System (System) as of March 13, 2009. We understand that the objectives of your audit are to:

- Examine the transactions of the Texas State University System Foundation's (Foundation) financing of Texan Hall dormitory at Angelo State University, including the transactions involving the formation and dissolution of the limited liability corporation.
- Determine whether the Foundation has transferred all funds pertaining to the construction and operation of Texan Hall dormitory appropriated, dedicated, or held for the use and benefit of Angelo State University to the Texas Tech University System.

The scope of this audit was from December 2002 to December 2008 and covered all transactions involved in creating a limited liability corporation to build Texan Hall dormitory; the issuance of the original bonds to finance construction; operation of that dormitory; and the sale of that dormitory from the Foundation to the System, with concurrent redemption of the original bonds and issuance of new bonds.

These representations are made in good faith and to the best of our knowledge and belief. We confirm, via our signatures, the following specific representations made to you relating to your audit:

1. We have made available to you all information relevant to your objectives and the transactions related to Texan Hall dormitory, including:
  - Financial and project records, related data, and reports.
  - Minutes from the board meetings.
  - Policies and procedures.
  - Planning documents.
  - Pertinent personnel.
  - Information concerning related parties.
  - Significant contracts and agreements.

2. We are responsible for project results.
3. We are responsible for the efficient use and protection of resources.
4. We have identified and disclosed to you all laws, regulations, rules, contracts, and other agreements that have a significant effect on the determination of the audit objectives.
5. We are responsible for compliance with these laws, regulations, rules, contracts, and other agreements.
6. We are in compliance with these laws, regulations, rules, contracts, and other agreements. We have identified and disclosed to you all known noncompliance with these requirements, except as follows on the attached addendum.
7. We have identified and disclosed to you all significant outstanding law suits related to the construction, operation, and sale of Texan Hall dormitory filed against the System and those settled during the audit period.
8. We are responsible for the accuracy, completeness, and timeliness of the information disseminated both verbally and in writing.
9. We are responsible for the fair presentation of financial position and project results in System reports.
10. We are responsible for establishing and maintaining effective internal controls to help ensure that appropriate goals and objectives are met; that resources are used efficiently, economically and effectively and are safeguarded; that laws and regulations are followed; and that reliable data are obtained, maintained, and fairly disclosed.
11. We have identified and disclosed to you any known significant deficiencies in internal controls affecting the audit objectives.
12. There have been no instances of fraud, violations, or abuse (either known or currently under investigation) involving management or employees, except as follows on the attached addendum. (Note: Cases involving individuals with significant roles in the internal control structure will be identified separately.)
13. We have disclosed all plans, intentions, and actions that may significantly affect the audit results, except as follows on the attached addendum.
14. All material transactions have been properly recorded in the accounting records, except as follows on the attached addendum.

\_\_\_\_\_  
Signature of Dr. Charles R. Matthews, Chancellor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Dr. Roland Smith, Vice Chancellor for Finance

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Dr. Fernando Gomez, Vice Chancellor and General Counsel

\_\_\_\_\_  
Date

Below are the representations that the Texas State University System provided to the State Auditor's Office.



## THE TEXAS STATE UNIVERSITY SYSTEM

Founded 1911

Thomas J. Rusk Building • 200 East 10<sup>th</sup> Street, Suite 600 • Austin, Texas 78701-2407  
(512) 463-1808 • Fax (512) 463-1816 • www.tsus.edu

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*Orange*

**Lamar State College—Port Arthur**  
*Port Arthur*

March 12, 2009

State Auditor's Office  
Attention: Ms. Kristin Alexander  
1501 N. Congress Ave., Suite 4.224  
Austin, Texas 78711

Dear Ms. Alexander:

This letter is being sent in lieu of your representation letter because we believe it does not clearly represent this audit.

Although the audit pertains to the Foundation, we can represent that, to the best of our knowledge and belief: a) applicable System documents pertaining to the System's refinancing and assumption of the Foundation's privatized dormitory debt were provided to you; and, b) the System's role in that refinancing was done properly, upon the advice of competent and expert lawyers and financial consultants, and with full disclosure to and vetting by private, federal, and state authorities, including but not necessarily limited to the Texas Bond Review Board and the Public Finance Division of the Texas Office of Attorney General.

We trust that this addresses your concerns; however, please advise if you wish to discuss this matter further.

Sincerely,

Dr. Charles R. Matthews, Chancellor

Dr. Roland Smith, Vice Chancellor for Finance

Dr. Fernando C. Gomez, Vice Chancellor and General Counsel

cc. Members, Board of Regents  
Ms. Carole Fox, Director of Audits and Analysis

Copies of this report have been distributed to the following:

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The Honorable David Dewhurst, Lieutenant Governor, Joint Chair  
The Honorable Joe Straus III, Speaker of the House, Joint Chair  
The Honorable Steve Ogden, Senate Finance Committee  
The Honorable Thomas “Tommy” Williams, Member, Texas Senate  
The Honorable Jim Pitts, House Appropriations Committee  
The Honorable Rene Oliveira, House Ways and Means Committee

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