



Board of Directors Agenda

Friday, July 12, 2024
10 a.m.

Welcome to SANDAG. The Board of Directors meeting scheduled for Friday, July 12, 2024, will be held in person in the SANDAG Board Room. While Board of Directors members will attend in person, members of the public will have the option of participating either in person or virtually.

For public participation via Zoom webinar, click the link to join the meeting: <https://us02web.zoom.us/j/86367683159>

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Public Comments: Members of the public may speak to the Board of Directors on any item at the time the Board of Directors is considering the item. Public speakers are generally limited to three minutes or less per person.

Persons who wish to address the members on an item to be considered at this meeting, or on non-agendized issues, may email comments to the Clerk at clerkoftheboard@sandag.org (please reference Board of Directors meeting in your subject line and identify the item number(s) to which your comments pertain). Comments received by 4 p.m. the business day before the meeting will be provided to members prior to the meeting. All comments received prior to the close of the meeting will be made part of the meeting record.

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Message from the Clerk: In compliance with Government Code §54952.3, the Clerk hereby announces that the compensation for legislative body members attending the following simultaneous or serial meetings is: Executive Committee (EC) \$100, Board of Directors (BOD) \$150, and Regional Transportation Commission (RTC) \$100. Compensation rates for the EC and BOD are set pursuant to the SANDAG Bylaws, and the compensation rate for the RTC is set pursuant to state law.



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This meeting will be conducted in English, and simultaneous interpretation will be provided in Spanish. Interpretation in additional languages will be provided upon request to ClerkoftheBoard@sandag.org at least 72 business hours before the meeting.

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Vision Statement: *Pursuing a brighter future for all*

Mission Statement: *We are the regional agency that connects people, places, and innovative ideas by implementing solutions with our unique and diverse communities.*

Our Commitment to Equity: *We hold ourselves accountable to the communities we serve. We acknowledge we have much to learn and much to change; and we firmly uphold equity and inclusion for every person in the San Diego region. This includes historically underserved, systemically marginalized groups impacted by actions and inactions at all levels of our government and society.*

We have an obligation to eliminate disparities and ensure that safe, healthy, accessible, and inclusive opportunities are available to everyone. The SANDAG equity action plan will inform how we plan, prioritize, fund, and build projects and programs; frame how we work with our communities; define how we recruit and develop our employees; guide our efforts to conduct unbiased research and interpret data; and set expectations for companies and stakeholders that work with us.

We are committed to creating a San Diego region where every person who visits, works, and lives can thrive.

Board of Directors

Friday, July 12, 2024

Comments and Communications

1. Non-Agenda Public Comments/Member Comments

Members of the public shall have the opportunity to address the Board on any issue within the jurisdiction of SANDAG that is not on the agenda. Public speakers are limited to three minutes or less per person. Public comments under this agenda item will be limited to five public speakers. If the number of public comments under this agenda item exceeds five, additional public comments will be taken at the end of the agenda. Board members and SANDAG staff also may present brief updates under this agenda item.

Consent

+2. Approval of Meeting Minutes

Approve

Tessa Lero, SANDAG

The Board of Directors is asked to approve the minutes from its June 28, 2024, meeting.

[062824 BOD Minutes.pdf](#)

+3. Meetings and Events Attended on Behalf of SANDAG

Information

Tessa Lero, SANDAG

This report provides an update on meetings and events attended by Board members.

[Meetings and Events Att on Behalf of SANDAG.pdf](#)

Reports

+4. FY 2025 Annual Audit Plan

Adopt

Courtney Ruby, Independent Performance Auditor

The Independent Performance Auditor will present the FY 2025 Annual Audit Plan for adoption by the Board of Directors.

[FY 25 Annual Audit Plan.pdf](#)

+5. State Route 11/Otay Mesa East Port of Entry Agreements

Approve

Andrea Hoff, Betsy Blake, SANDAG; Nikki Tiongco, Caltrans

The Borders Committee recommends the Board of Directors approve the Federal and Binational Agreements for State Route 11/Otay Mesa East Port of Entry.

[State Route 11_OME POE Agreements.pdf](#)

[Att. 1 - Draft Toll Allocation Agreement.pdf](#)

[Att. 2 - Draft NADBank Custodial Agreement.pdf](#)

[Att. 3 - Draft Toll Governance Agreement.pdf](#)

[Att. 4 - Resolution No. 2024-32.pdf](#)

[Att. 5 - Oct 14, 2022 Brd Rpt Toll Rev Sharing Agreement.pdf](#)

[Att. 6 - NADBank Flow of Funds Visuals.pdf](#)

[Att. 7 - Discussion Memo.pdf](#)

[Supporting Materials.pdf](#)

Closed Session

- +6. Conference with Legal Counsel – Existing Litigation Pursuant to Government Code Section 54956.9(d)(1) – Osmon v. City of San Diego (San Diego Superior Court Case No. 2020-00018911) and Potential Initiation of Litigation Pursuant to Government Code Section 54956.9(d)(4) (Two Potential Cases)**
Ryan Kohut, SANDAG, Greg Bergman, BDG Law Group

The Board of Directors will be briefed regarding the status of the referenced litigation, as well as the potential initiation of litigation for two related matters.

Adjournment

7. Adjournment

The next Board of Directors meeting is scheduled for Friday, July 26, 2024, at 9 a.m.

+ next to an agenda item indicates an attachment

June 28, 2024, Board of Directors Minutes

[View Meeting Video](#)

Chairwoman Nora Vargas (County of San Diego) called the meeting of the Board of Directors to order at 9 a.m.

1. Non-Agenda Public Comments/Member Comments

Public Comments: Michael Brando, Alan C., Truth, Rita Clement, and Mark.

Agency Updates: Chairwoman Vargas and Chief Executive Officer Mario Orso.

Member Comments: None.

Consent

2. Approval of Meeting Minutes

The Board of Directors was asked to approve the minutes from its May 24, 2024, meeting and the June 14, 2024, Tribal Summit.

3. Meetings and Events

This report provided an update on meetings and events attended by Board members.

4. Transportation Development Act: FY 2024 Productivity Improvement Program and FY 2025 Allocations

The Transportation Committee recommended that the Board of Directors approve the eligibility of the Metropolitan Transit System and North County Transit District to receive their FY 2025 Transportation Development Act allocations of funds.

5. FY 2025 Transportation Development Act and State Transit Assistance Claims

The Transportation Committee recommended that the Board of Directors adopt Resolution Nos. 2024-24 through 2024-29, approving the FY 2025 Transportation Development Act and State Transit Assistance (STA) claims in substantially the same form as the attached resolutions; and approve the STA findings as certified by the North County Transit District.

6. Federal Transit Administration Section 5311 Program of Projects

The Transportation Committee recommended that the Board of Directors approve the Federal Fiscal Year 2024 apportionments of Federal Transit Administration Section 5311 Non-Urbanized Area Formula Program funds for the San Diego region.

7. Annual Public Transit Report

The Transportation Committee recommended that the Board of Directors approve the submission of the Annual Public Transit Report to the State Legislature.

8. Waiver of Timeline to Prepare Coordinated Plan

The Board of Directors was asked to approve a waiver of Board Policy No. 018 to authorize staff to update the Coordinated Plan (Regional Short-Range Transit Plan and Coordinated Public Transit-Human Services Transportation Plan) by mid-2025 rather than 2024.

9. Policy Advisory Committee Actions

The Board of Directors was asked to ratify the actions taken by the Policy Advisory Committees since the last Board meeting.

10. FY 2025 Transportation Development Act Unobligated Funds Reserve Release

The Transportation Committee recommended that the Board of Directors adopt Resolution Nos. 2024-20 through 2024-23, approving the release of Transportation Development Act reserves as requested by the Metropolitan Transit System, North County Transit District, the Consolidated Transportation Services Agency, and SANDAG.

11. Chief Executive Officer Delegated Actions*

In accordance with various Board Policies, this report summarized delegated actions taken by the Chief Executive Officer.

12. Approval of Proposed Solicitations and Contract Awards

The Board of Directors was asked to authorize the Chief Executive Officer to conduct a solicitation for Next Gen Rapid Planning and Design as detailed in this report, and award contracts to the vendors identified in this report for Transportation Demand Management Outreach and Marketing and SANDAG Regional Vanpool Leasing Program.

13. Approval of Proposed Solicitation: Otay Mesa East Port of Entry Project and Proposed Evaluation Criteria for Construction Manager/General Contractor Procurement

The Board of Directors was asked to authorize the Chief Executive Officer to conduct a solicitation for the Otay Mesa East Port of Entry Project Construction Manager/General Contractor Services and approve the proposed evaluation criteria.

14. 2023 Regional Transportation Improvement Program Amendment No. 13 and Air Quality Conformity Re-Determination*

The Transportation Committee recommended that the Board of Directors adopt Resolution No. 2024-31, approving Amendment No. 13 to the 2023 Regional Transportation Improvement Program and adopting the Air Quality Conformity Re-Determination.

Public Comments: Truth, Alan C., Mark, Hermes, Paul the Bold, The OriginalDra, and Blair Beekman.

Action: Upon a motion by Mayor Rebecca Jones (San Marcos), and a second by Councilmember Jack Shu (La Mesa), the Board voted to approve the Consent Agenda.

The motion passed.

Yes: Chairwoman Vargas, Second Vice Chair Lesa Heebner (Solana Beach), Councilmember Melaine Burkholder (Carlsbad), Councilmember Carolina Chavez (Chula Vista), Councilmember John Duncan (Coronado), Deputy Mayor Terry Gaasterland (Del Mar), Mayor Bill Wells (El Cajon), Mayor Tony Kranz (Encinitas), Mayor Dane White (Escondido), Councilmember Jack Fisher (Imperial Beach), Councilmember Shu, Mayor Racquel Vasquez (Lemon Grove), Councilmember Luz Molina (National City), Councilmember Rick Robinson (Oceanside), Councilmember Raul Campillo (City of San Diego),

Mayor Jones, Mayor John Minto (Santee), and Deputy Mayor Katie Melendez (Vista).

No: None.

Abstain: None.

Absent: Poway.

Reports

15. LOSSAN Rail Realignment Project

Regional Planning Program Manager Danny Veeh and Deputy Director of Planning Keith Greer presented an update on the California Environmental Quality Act Notice of Preparation and future National Environmental Policy Act processes for the LOSSAN Rail Realignment project, including proposed public outreach and engagement activities during the scoping period.

Public Comments: Truth, Alan C., Laura Schaefer, Mark, Hermes, Paul the Bold, Shirli Weiss, Camilla Rang, Lisa Montes, Carla Hayes, Sandra Hutton, Samsung (Consuelo), Solana Beach Chamber, Blair Beekman, and The OriginalDra.

A motion was made by Second Vice Chair Heebner, and a second by Mayor Kranz, to stop the NOP and concurrently assemble a group of stakeholders from the Cities of Del Mar, Solana Beach, and San Diego, as well as NCTD and the Del Mar Fairgrounds, to provide input on a value analysis, and also consider alignments that do not maintain the train station in the City of Solana Beach.

A substitute motion was made by Deputy Mayor Gaasterland, and a second by Councilmember Burkholder, to move forward with the environmental process for the LOSSAN Rail Realignment Project, and concurrently assemble a group of stakeholders from the Cities of Del Mar, Solana Beach, and San Diego, as well as NCTD and the Del Mar Fairgrounds, to provide input on a value analysis.

After discussion and direction to staff, the Board withdrew both the original motion and the substitute motion by unanimous consent.

16. Specialized Transportation Grant Program Cycle 13 Call for Projects*

The Transportation Committee recommended that the Board of Directors approve the Specialized Transportation Grant Program Cycle 13 Call for Projects and other process changes as described in the report.

Public Comments: Truth, Alan C., Mark Fletcher, Dan Totah, Arun Prem, Deborah Martin, Kristine Stensberg, Lisa Nokes, Adrianna Yenhatpe, Marcy Roke, Kaley Levitt, Phil Monroe, Mark, Jean Durgan, Blair Beekman, Samsung (Consuelo), Paul the Bold, and Felix Lafuente.

Action: Upon a motion by Councilmember Shu, and a second by Councilmember Chavez, the Board voted to approve the Specialized Transportation Grant Program Cycle 13 Call for Projects, as follows: approve the proposed STGP Cycle 13 Call for Projects, including the evaluation criteria and process for awarding funding, except the Board shall retain discretion over final Section 5310 awards subject to FTA requirements; lower the maximum amount of SMG funding an applicant can receive to \$1 million and keep the existing maximum amount of Section 5310 funding an applicant can receive at \$1.2 million; approve a 26% annual allocation of FFY 2023 and 2024 Section 5310 pass-through funding available (approximately \$835,543 and \$856,666 respectively) to FACT for RideFACT service and mobility management; should the Board approve a direct allocation of Section 5310 funds to FACT, exempt the direct allocation of Section 5310 funds to FACT from FACT's maximum grant award amount, and prohibit FACT from competing for or receiving the remaining Section 5310 grant funding; and reinstate the allowability of indirect costs for the SMG program starting with the STGP Cycle 13 Call for Projects consistent with the proposed indirect cost guidelines.

The motion passed.

Yes: Chairwoman Vargas, Second Vice Chair Heebner, Councilmember Burkholder, Councilmember Chavez, Councilmember Duncan, Deputy Mayor Gaasterland, Mayor Kranz, Mayor White, Councilmember Fisher, Councilmember Shu, Mayor Vasquez, Councilmember Molina, Councilmember Robinson, and Mayor Jones.

No: Councilmember Vivan Moreno (City of San Diego) and Mayor Minto.

Abstain: None.

Absent: El Cajon, Poway, and Vista.

Closed Session Public Comments: Truth, Mark, Paul the Bold, Blair Beekman, Samsung (Consuelo), and The OriginalDra.

Chairwoman Vargas recessed to closed session at 1:16 p.m.

Closed Session

17. Conference with Property Negotiators Pursuant to Government Code Section 54956.8

The Board of Directors was briefed on the status of the sale of the real property located at 5965 & 5975 Santa Fe Street, San Diego, CA (Assessor Parcel Numbers 359-010-40 and 359-010-41) and consider granting authority to its negotiators regarding the price and terms of payment for the property's sale on the open market.

18. Conference with Legal Counsel –Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(d)(2) (One Potential Case) and Potential Initiation of Litigation Pursuant to Government Code Section 54956.2(d)(4) (One Potential Case)

The Board of Directors was briefed on a written claim filed by Rodrigo Rodriguez alleging lost wages in connection with work performed on behalf of a SANDAG contractor as well as the potential initiation of litigation for a related matter.

Chairwoman Vargas reconvened to open session at 1:39 p.m.

Deputy General Counsel Amberlynn Deaton reported the following out of closed session: The Board met in closed session and on Agenda Item No.17, there was no reportable action at this time; and on Agenda Item No. 18, the Board voted to deny the claim.

Continued Non-Agenda Public Comments: Paul the Bold, The OriginalDra, Blair Beekman, and Samsung (Consuelo).

19. Adjournment

The next Board of Directors meeting is scheduled for Friday, July 12, 2024, at 10 a.m.

Chairwoman Vargas adjourned the meeting at 1:45 p.m.

Confirmed Attendance at SANDAG Board of Directors Meeting

Board of Directors	Title	Name	Attend
City of Carlsbad	Councilmember	Melanie Burkholder (Primary)	Yes
City of Chula Vista	Councilmember	Carolina Chavez (Primary)	Yes
City of Coronado	Councilmember	John Duncan (Primary)	Yes
County of San Diego	Chairwoman	Nora Vargas (Primary)	Yes
County of San Diego	Supervisor	Joel Anderson (Primary)	No
City of Del Mar	Deputy Mayor	Terry Gaasterland (Primary)	Yes
City of El Cajon	Mayor	Bill Wells (Primary)(left 11:50)	Yes
City of Encinitas	Mayor	Tony Kranz (Primary)	Yes
City of Escondido	Mayor	Dane White (Primary)	Yes
City of Imperial Beach	Councilmember	Jack Fisher (Primary)	Yes
City of La Mesa	Councilmember	Jack Shu (Primary)	Yes
City of Lemon Grove	Mayor	Racquel Vasquez (Primary)	Yes
City of National City	Councilmember	Luz Molina (Primary)	Yes
City of Oceanside	Councilmember	Rick Robinson (Alternate)	Yes
City of Poway	Mayor	Steve Vaus (Primary)	No
City of San Diego	Councilmember	Raul Campillo (Alternate)(left 11:40)	Yes
City of San Diego	Councilmember	Vivan Moreno (Alternate)	Yes
City of San Marcos	Mayor	Rebecca Jones (Primary)	Yes
City of Santee	Mayor	John Minto (Primary)	Yes
City of Solana Beach	Second Vice Chair	Lesa Heebner (Primary)	Yes
City of Vista	Deputy Mayor	Katie Melendez (Primary)(left 11:30)	Yes
Caltrans	Deputy Director	Roy Abboud	Yes
Metropolitan Transit System	Councilmember	Matthew Leyba-Gonzalez (Primary)	No
North County Transit District	Deputy Mayor	Jewel Edson (Primary)	Yes
Imperial County	Supervisor	Jesus Eduardo Escobar	No
U.S. Department of Defense	Executive Director	Dennis Keck (Primary)	Yes
Port of San Diego	Commissioner	Dan Malcolm (Primary)	Yes
San Diego County Water Authority	Director	Mel Katz (Primary)	No
SDCRAA	Director	Gil Cabrera (Primary)	Yes
Mexico	Consul General	Alicia Kerber (Primary)	Yes
SCTCA	Chairwoman	Erica Pinto (Primary)	No
Association of Planning Groups	Chairwoman	Robin Joy Maxson	Yes

Meetings and Events Attended on Behalf of SANDAG

Overview

In accordance with Government Code requirements, when members of a legislative body attend meetings at the expense of the local agency, a report is to be provided summarizing such meetings. Since the last report, Board of Directors members reported their participation in the following meetings and events on behalf of SANDAG. Key topics of discussion are also summarized.

June 27, 2024: FACT Board Meeting

Deputy Mayor Jewel Edson (Solana Beach) participated in the FACT Board Meeting as the officially appointed representative for SANDAG. The FACT Board received updates and reports from its partners, including SANDAG. The Board discussed ridership for RideFACTNOW and other partner services and updates on the status of grant-funded projects and programs.

Victoria Stackwick, Chief of Staff

Action: Information

This report provides an update on meetings and events attended by Board members.

Fiscal Impact:

Funding for expenses related to these meetings is provided via Overall Work Program Element No. 9000100 in accordance with Article III, Section 5 of the SANDAG Bylaws.

Schedule/Scope Impact:

None.

Message from the Independent Auditor

I am pleased to present the Office of the Independent Performance Auditor's (OIPA) Audit Plan for Fiscal Year 2024-25 (FY25) in accordance with California Assembly Bill 805 (AB 805) and SANDAG Board Policy No. 039: Audit Policy Advisory Committee and Audit Activities. Board Policy No. 039, Section 6.4, states the independent performance auditor shall annually prepare an audit plan, based upon the results of the risk assessment, and conduct audits in accordance therewith.

To fulfill this mandate, OIPA conducts an annual risk assessment to inform the areas to be audited in the coming year. This process includes identifying, evaluating, and prioritizing key risks to develop an effective and impactful audit plan. The following pages go through the steps involved in the risk assessment process and conclude with the proposed Audit Plan for FY25.

Next year, the annual risk assessment process will be expanded to include an opportunity for all SANDAG project managers to have a risk interview with OIPA, surveys for broader staff and public involvement, and guiding the Executive Team and Directors through a focused risk assessment process to assist in identifying departmental risks.

I want to thank the Board of Directors and Audit Committee members who participated, and SANDAG's Executive Team and Department Directors for entrusting me with your concerns and sharing your ideas during this year's annual risk assessment process. The effectiveness of this process is dependent upon open and honest communication with key stakeholders in addition to the OIPA's analysis of the risks surrounding SANDAG.

Sincerely,



Courtney Ruby CPA, CFE
Independent Performance Auditor

Office of the Independent Performance Auditor

California Assembly Bill 805 (AB 805) enacted in January 2018 created the Office of the Independent Performance Auditor (OIPA) and the Audit Committee that appoints the Independent Performance Auditor (IPA), and to whom the IPA reports. SANDAG Board Policy No. 039 - Audit Policy Advisory Committee and Audit Activities specifies the functions of the Independent Performance Auditor and the SANDAG Audit Committee, which assists the Board in fulfilling its oversight responsibilities.

The OIPA serves as the SANDAG Board of Directors' oversight function that objectively evaluates and recommends improvements to SANDAG operations. The OIPA prioritizes its efforts through an annual objective risk assessment and by continually monitoring concerns and trends from the Whistleblower Hotline.

Per AB 805, the OIPA has the authority to conduct performance audits of all departments, offices, boards, activities, and programs of the consolidated agency.

The OIPA is also the official body of SANDAG to investigate allegations of potential fraud, waste, abuse, and gross mismanagement identified by SANDAG staff or other stakeholders.

The OIPA conducts performance audits in accordance with [Government Auditing Standards](#) (GAGAS) set by the Government Accountability Office under the U.S. Comptroller General.

What the OIPA Produces

Most OIPA resources are dedicated to conducting performance audits to assess the economy, efficiency, effectiveness, equity, and compliance of programs and activities. Performance audits provide independent objective analysis to SANDAG's leadership and the public, and make recommendations to management, and those charged with governance and oversight, on how to improve services, reduce costs, and increase public accountability.

In addition to performance audits, the OIPA conducts:

- **Annual reports.** The OIPA prepares and issues annual reports to summarize audit and investigative activities performed by the OIPA. Additionally, an annual Corrective Action Plan is produced to track the implementation status of all OIPA recommendations.
- **Investigations.** The OIPA operates a Whistleblower Hotline to receive and investigate allegations of fraud, waste, abuse, and gross mismanagement, affecting or involving SANDAG resources, employees, officials, or contractors. Investigations are also initiated directly by the IPA, or upon request by the SANDAG Board of Directors and Audit Committee.
- **Corrective Action Plan follow-up reports.** The OIPA regularly reports on the status of recommendations from previous audits.
- **Special requests.** The OIPA, based upon available resources, may conduct special analyses and reviews requested from the SANDAG Board of Directors, Audit Committee or Management.

Strategic Goals for Fiscal Year 2025

The strategic goals for the OIPA include those actions which will directly contribute to improving SANDAG by promoting efficiency and accountability throughout the Agency. These clearly defined goals incorporate planned audits, targeted risk management, timely recommendation follow-up, and the identification, reduction, and deterrence of fraud, waste, abuse, and gross mismanagement.

Goal #1 – Policy, Process Improvements, and System Controls

- Conducts performance audits focused on high-risk areas where improvements will create needed organizational change and address systemic issues impacting operations.

Goal #2 – Detection and Deterrence of Fraud, Waste and Abuse

- Perform timely investigations in the areas of fraud, waste, abuse, and gross mismanagement. Prioritize resources based upon potential impact to the organization, the public, and stakeholders.

Goal #3 – Enhancement of the Whistleblower Hotline Program

- Educate all SANDAG employees and governing body on the OIPA's Whistleblower Hotline Program including Whistleblower protection from retaliation.
- Develop contractor outreach campaign.

Goal #4 – Development and Monitoring of Corrective Action Plans

- Ensure OIPA's recommendations are clear, timely, and responsive, and implemented by management expeditiously.

Performance Measures

These performance measures are designed to evaluate the IPA's effectiveness in meeting the legislated mandate, including producing quality impactful work; maintaining and developing a professional audit team; and conducting work independently while maintaining professional and respectful working relationships with auditees, management and the governing body.

IPA Performance Measure	Target
PRODUCTIVITY / INCREASED WHISTLEBLOWER HOTLINE PROGRAM AWARENESS	
Audit/Investigation Reports per auditor	1.5
Budgeted vs. Actual audit hours per engagement	70%
Increase Whistleblower Hotline reporting (cases received) over prior year	50%
Employee Whistleblower Hotline education and outreach events	3
TRANSPARENCY AND ACCOUNTABILITY	
The status of Corrective Action Plans (CAP)s in response to the OIPA's audit findings and recommendations will be verified and reported to the Audit Committee on an annual basis. Periodic verbal updates will occur at the Audit Committee.	100%
The IPA will work with Management to maintain a summary of all SANDAG internal and external audit recommendations to be included in the annual CAP report.	100%
LEADERSHIP	
Percentage of strategic goals achieved	90%
Foster collaborative, respectful, and productive working relationships with auditee, SANDAG Board, Audit Committee, management, and staff. <i>A 360-type performance review/survey will be conducted to include, at a minimum, auditees, management, governing body and staff of SANDAG, and may include external stakeholders. Survey tool will calculate % score.</i>	75%
STAFF DEVELOPMENT	
Auditors will adhere to professional certification and licensing requirements, completing no less than 40 annual hours of continuing education.	100%
Increase specialized audit and investigations expertise within the OIPA. 50% of audit team to participate in specialized training in contracting and investigations.	50%

Risk Assessment Process

The risk assessment process is used to detect, evaluate, and prioritize prospective audits based on the level of risk presented to the organization. Identifying risks as potential barriers to achieving SANDAG's strategic goals and objectives will aid in narrowing the target of audits. Risk-based audit plans serve to direct limited auditing resources to perform evaluations of controls, ensure risks are managed to acceptable levels, and evaluate the success of individual departments, programs, and initiatives in meeting their goals and mandates.

Prioritizing Performance Audits

The IPA must carefully consider many factors when deciding what audits to prioritize, and how to best use limited agency resources. To do this, the IPA must consider:

- **Board of Directors, Audit Committee Members, Department Directors, public, employee, and other stakeholder concerns.** The IPA prioritizes concerns raised by key stakeholders.
- **Existing or Emerging Risks.** The IPA plays a critical role in identifying ways SANDAG can effectively meet its mission and knowing the risks that impede success are critical. These include:

External Risks

- *Political* - Alterations to financial projections due to unanticipated budgetary changes at the federal/state level.
- *Economic* – Impacts to budgets or services due to inflation, high interest rates, or increases in service demand.
- *Social* – Population trends (age distribution, income disparities) that may impact service demand and delivery.
- *Technological* – Ability to keep up with costs and security risks associated with rapidly changing adopted technology.
- *Legal/Compliance* – Changes to regulations via federal/state legislation, pending litigation, or accepted best practices.
- *Environmental* – Climate change, natural disasters, changes in resource consumption.

Internal Risks

- *Capital* – Errors or malfeasance resulting in loss or theft of funds, equipment, property, or other assets.

- *People* – Inability to quickly hire qualified staff, poor management of existing personnel, high turnover.
- *Process* – Lack of adequate policies/procedures; resource inefficiency.
- *Technology* – Aging systems, lack of interfaces, etc.
- **Fiscal Impact.** SANDAG cannot deliver its multitude of regional programs and initiatives without sufficient financial resources. Accordingly, the IPA prioritizes audits which may identify ways to improve the agency's financial and/or budgetary position.
- **SANDAG Program and Resource Delivery.** The IPA prioritizes audits pertaining to core SANDAG responsibilities as a metropolitan planning organization, regional transportation and fund allocation agency, TransNet administrator, and regional toll authority. Factors that weigh heavily in the consideration of an audit may include:
 - Recent departmental changes, number of budgeted full-time equivalent employees, and/or high employee turnover.
 - Number and/or technological complexity of mission critical information system functions within a given department.
 - Past audit findings and recommendations.

In addition to the factors above, the IPA must consider:

- **Urgency.** Prioritize proposed audits that involve urgent matters over those that are less time sensitive.
- **Available Resources.** Consider the availability of OIPA resources, including staff capacity, qualifications, skills, and time needed to conduct proposed audits.
- **Duplication of Efforts.** Coordinate audit functions such that there is no duplication of effort between the audits undertaken by the OIPA and audits/assessments undertaken by other parties.

Lastly, the IPA is responsible for reviewing the annual audit plan each quarter to ensure performance measures, goals, and auditing/investigative activities are on track to meet the approved plan. When necessary, the IPA will propose audit plan revisions to the Audit Committee.

The flexibility of the audit planning process as designed also allows for unplanned engagements at the request of the IPA, Board of Directors, Audit Committee, and management, and in response to fraud, waste, abuse, and complaints of gross mismanagement.

Fiscal Year 2025 Audit Plan

The Audit Plan includes projects already in process, and those that will begin in FY25, based on the above framework described in the “Prioritizing Performance Audits” section.

The number of planned audits is based on an assumed rate of 1.5 audits per auditor¹ per year, with an average of two auditors assigned to each audit.

Audits Currently in Process and Anticipated to Be Completed in FY25

- HNTB: Evaluate if there was sufficient oversight over contractor and provided by contractor, and if SANDAG complies with established contracting requirements and models best practices

OIPA’s Required Annual Work to be Completed in FY25

- *Annual Recommendation Follow-up
(Status of Management’s Corrective Action Plans)*
- *Annual Investigations Report*
- *Annual Risk Assessment and Proposed Audit Plan*

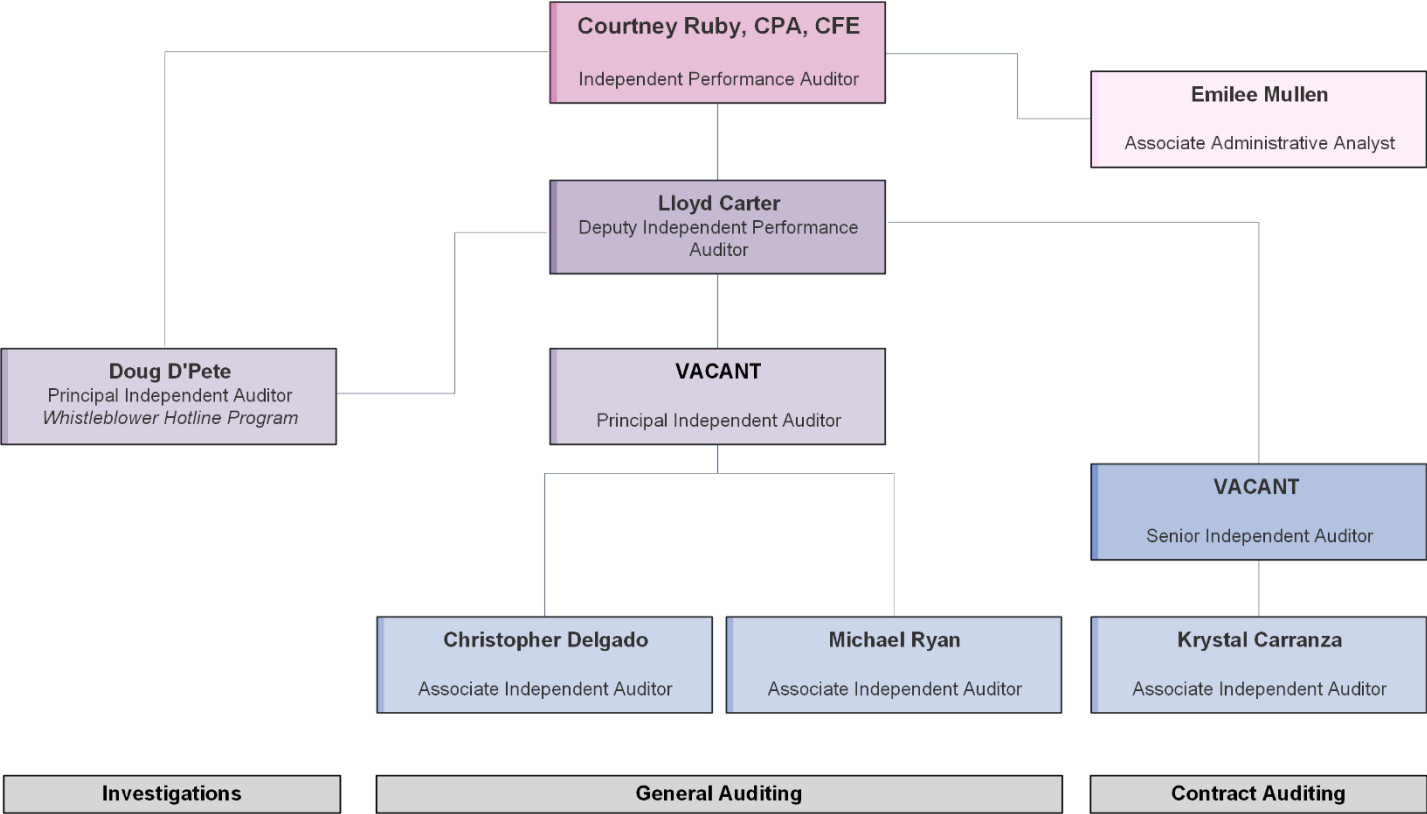
Priority Audits/Reports to Launch in FY25

- *Independent Assessment of Finance Department (Contracted)*
- *Sole-Source Procurement Process*
- *Ethical Climate Survey*
- *Administration of Bike Program – EAP: Early Action Plan*
- *Talent Management – Workforce Planning and Succession Management*
- *Departmental Risk Assessment*
- *Project Management: Internal Projects and Capital Projects*
- *Anticipate Issuing Four (4) Investigation Reports*

There are more audit topics considered for the upcoming fiscal year than resources available. For a list of all audit topics considered see Appendix C: Potential Audit Topics Considered.

¹ The FTE count included the following adjustments, both the IPA and Deputy IPA are counted as .5 due to supervisory and administrative responsibilities. In addition, the OIPA is recruiting for 2 new audit positions and these will be included as .5 FTE in this calculation to account for hiring lead time and productivity ramping up time.

Appendix A: About OIPA



Structure

- The Independent Performance Auditor (IPA) is appointed by the Audit Committee to a 3-year, renewable term subject to approval by the SANDAG Board of Directors and reports directly to the Audit Committee.
- Courtney Ruby was appointed IPA in November 2023.
- The OIPA currently has 9 FTE positions:
 - 6 Auditors
 - 1 Administrative position
 - 2 Auditor vacancies currently in recruitment²
- Staffing is expected to increase to **13 FTE positions by FY 2027**.

² Principal and Senior Independent Auditor positions have been advertised and are expected to be filled by late summer.

Responsibilities

The OIPA serves as the SANDAG Board of Directors' oversight function that objectively evaluates and recommends improvements to SANDAG operations. OIPA prioritizes its efforts through an annual objective risk assessment and by continually monitoring concerns and trends from the Whistleblower Hotline.

The OIPA has the authority to conduct performance audits of all departments, offices, boards, activities, and programs of the consolidated agency.

The OIPA is also the official body of SANDAG to investigate allegations of potential fraud, waste, abuse, and gross mismanagement identified by SANDAG staff or other stakeholders.

Compliance with Government Auditing Standards (GAGAS)

Audit organizations performing audits in accordance with GAGAS must have an external peer review performed by independent reviewers at least once every three years. This review determines whether the audit organization's internal quality control system is adequate, and whether its policies and procedures are complied with to provide reasonable assurance that it conforms with GAGAS.

The OIPA's last external peer review was issued on June 3, 2022. The scope of the review was July 1, 2020, through May 31, 2022. The OIPA received the highest rating of "Pass" with no deficiencies found in its system of quality control. The review found that the OIPA's quality control system was suitably designed and complied with to provide reasonable assurance of performing and reporting in conformity with GAGAS.



SANDAG

OIPA

Office of the Independent
Performance Auditor

Whistleblower Hotline

Online

[Complaint Form](#)

Phone

(619) 595-5386

Email

cruby.ipa.oipa@gmail.com

Whistleblower Hotline Program

The OIPA investigates allegations of fraud, waste, abuse and gross mismanagement identified by agency staff or other stakeholders.

Whistleblower complaints are reviewed to determine:

- If they involve SANDAG property, infrastructure, employees, officials, contractors, or otherwise fall within the OIPA's jurisdiction.
- If they meet the criteria of fraud, waste, abuse or gross mismanagement.
- If the events in question occurred within the past year.
- If sufficient information was provided to initiate an investigation.
- If the events are currently being litigated

A whistleblower's personal information will remain confidential during and after the investigation to ensure their rights are protected; it will only be disclosed if necessary to appropriate government officials or law enforcement.

Whistleblowers may submit information anonymously and are protected from retaliation pursuant to California Labor Code Section 1102.5.

Annual Audit Plan

Fiscal Year 2025

SANDAG

OIPA

Office of the Independent
Performance Auditor

Budget

OPIA expenses are allocated across projects in the Overall Work Program (OWP), regional operations and services, and capital budgets based on direct labor dollars charged to each project and funded accordingly.

FY 2025 Office of the Independent Performance Auditor

Budget³

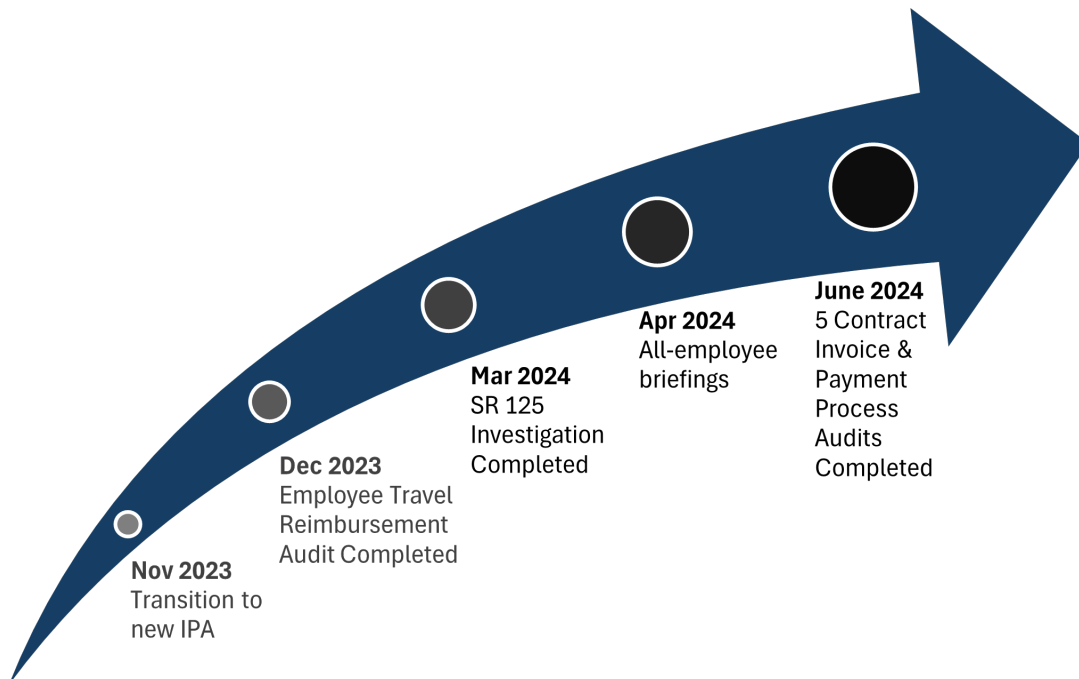
	FY 2023 Actual Budget	FY 2024 Budget	FY 2025 Budget	% of Non- Personnel Costs	Annual % Change
Personnel					
Salaries and Benefits	\$1,160,547	\$1,334,374	\$2,085,898	-	56.3%
Subtotal Personnel	1,160,547	1,334,374	2,085,898	-	56.3%
Non-Personnel					
Memberships and Publications	9,039	7,000	7,000	18.6%	0.0%
Training Program	700	30,600	30,600	81.4%	0.0%
Subtotal Non-Personnel	\$9,739	\$37,600	\$37,600	100.0%	0.0%
Total Budget	1,170,286	1,371,974	2,123,498		54.8%
Less: Items Funded with Other Sources	-	-	-	-	0.0%
Indirect Costs to be Allocated	\$1,170,286	\$1,371,974	\$2,123,498	-	54.8%

³ Items Funded with Other Sources funded with Member Assessments, TransNet Administration, and TransNet/FasTrak® swap in FY 2021 and FY 2022. Beginning in FY 2023, indirect costs associated with OIPA are spread throughout the agency's projects.

Appendix B: FY 2024 Accomplishments

In November 2023, the Office of the Independent Performance Auditor transitioned to the leadership of Independent Performance Auditor, Courtney Ruby.

- Investigation Report on SANDAG's State Route 125 Toll Operations:
 - Investigation completed on accelerated, three-month timeline.
 - Identified Seven (7) findings including ETAN's Fastlane financial reporting cannot be relied upon and the Finance department lacks adequate internal controls, including proper review and supervision, to ensure SR 125 financial information is accurately recorded and reported.



- Expansion of OIPA with an enhanced focus on the Whistleblower Program, continued focus on SANDAG contracting processes, and commitment to employee and stakeholder outreach.
 - Added Principal Independent Auditor, Senior Independent Auditor, and Associate Administrative Analyst positions.
 - Two (2) additional auditors received certification from the Association of Certified Fraud Examiners (ACFE).

- Operational Process and System Control Audit for Board Member and Employee Travel and Other Business-Related Reimbursements for the Period of July 1, 2020, through May 31, 2023.
 - Two (2) findings and six (6) recommendations issued.
 - Management committed to standardizing request forms and ensuring guidelines for employee business travel were updated.
- Continuous Auditing Operational Process and System Control Review – Purchase Cards for the period of March 1, 2022, to April 22, 2023.
 - Two (2) findings and seven (7) recommendations issued.
 - Management committed to developing additional P-card training and reviews.
- Performance Audit of SANDAG’s Contracts Invoicing and Payment Process for the Audit Period of July 1, 2019, to June 30, 2023.
 - Invoices sampled from five (5) contractors previously identified in the Operational Process and System Control Review – Contracts and Procurement Audit Part I issued in October 2022.
 - Four (4) findings and seven (7) recommendations issued.
 - Many of the findings and recommendations aligned with those previously issued in the Contracts and Procurement Audit Parts I and II.

Appendix C: Potential Audit Topics Considered

As noted above, the OIPA identifies more high-risk audit areas than we can conduct given limited resources. The following is the potential audit topics considered for the upcoming fiscal year from all sources, in no particular order, including those from internal reviews, risk assessment discussions, board requests, staff requests/concerns, continuing audits, and operational concerns submitted via the Whistleblower Hotline Program.

Staff Travel	I-5 / SR 78 Interchange Project
Records Management	Agencywide Risk Management
All Contracting Activities	Administrative Policies and Standard Operating Procedures
Organizational Coordination / Consistency / Standardization	Impacts of Budget Constraints
SANDAG's Mandated Responsibilities	Management Accountability
Board Governance Policies and Best Practices	HR Policies and Practices
Airport Transit Connections Project	SANDAG's Management Authority, Delegation and Escalation Procedures
IT Systems and Cybersecurity	Otay Mesa East Project
Project Funding Controls	Staffing Equity Analysis
Capital Projects: Technology and Resource Planning Tools	Capital Projects: Risk Management
Capital Projects: Inflationary Impacts	Office Move
Purchasing Card Practices	Tolling Operations
SR 125 Implementation	Office of General Counsel Organizational Structure in MPOs/COGs
Contract Monitoring: Performance and Funding	Cross-training
Contracting Best Practices	Agency Harassment, Discrimination, and Retaliation Investigation Practices
Staff Training, Professional Development and Certifications	Budget Process
Capital Projects: Delivery Performance	Agencywide Technology Assessment
Regional Housing Needs Allocation Methodology	Organizational Structure, Mandated Responsibility and Resource Allocation
Transportation Grant Selection Process	Staff Travel
Effectiveness of SANDAG's Outreach Strategies: Regional Plan, Transit Projects/Policy Work, and Community Involvement	

State Route 11/Otay Mesa East Port of Entry Agreements

Overview

This report details three proposed binational agreements for the State Route (SR) 11/Otay Mesa East Port of Entry Project: 1) the Amended and Restated Toll Allocation Agreement with Mexico's Ministry of Infrastructure, Communications and Transportation (SICT), 2) the Toll Governance Agreement with SICT, and 3) the Custodial Agreement with SICT and the North American Development Bank (NADBank).

High-level terms of these agreements were presented for information to the SANDAG Board of Directors (BOD) on May 10, 2024. On June 28, 2024, the Borders Committee recommended that the BOD approve execution of the agreements, which are necessary for the Project's financing and operation.

Action: **Approve**

The Borders Committee recommends the Board of Directors approve the Federal and Binational Agreements for State Route 11/Otay Mesa East Port of Entry.

Fiscal Impact:

The Toll Allocation Agreement and related agreements can result in \$7.2 billion in revenues over 40 years split between both Parties.

Schedule/Scope Impact:

None.

Key Considerations

The SR 11/Otay Mesa East Project (OME or Project) is a joint venture between SANDAG and Caltrans, in collaboration with state and federal partners in the U.S. and Mexico, to create a 21st century border crossing and supportive facilities that will enhance regional mobility, improve border security, reduce air pollution, fuel economic growth, and bolster binational trade.

Recent OME Binational Agreements

On June 28, 2021, binational Project stakeholders signed a Memorandum of Understanding (2021 MOU), which envisioned an innovative, collaborative toll collection process whereby SANDAG, through its toll operations center, would impose a single, dynamically priced toll for both northbound and southbound traffic through the Otay Mesa East Land Port of Entry Project (OME POE), and allocate the collected toll revenues equitably with Mexico. This approach is different than a traditional border crossing toll arrangement, where each country is entitled to collect a toll upon an individual's departure. To support the proposed tolling structure, Mexico has agreed not to impose any tolls for northbound traffic, which represents about 80% of the anticipated OME POE revenue.

On October 24, 2022, with the Borders Committee's recommendation and the BOD's approval, SANDAG signed a historic and binding Toll Revenue Sharing Agreement with SICT (2022 Toll Agreement), which memorialized the innovative toll collection process noted above and also provided that the OME POE tolls be shared equitably between the Parties. Table 1 summarizes other key terms of the 2022 Toll Agreement:

Table 1: Other Significant Terms of the 2022 Toll Agreement

Topic	Summary of Term
Agreement's Duration	From January 1, 2023, until the later of January 1, 2063, or the date SANDAG pays the Project bonds, TIFIA loan, and other obligations under the 2022 Toll Agreement in full.
Toll Setting and the Binational Working Group	The BOD shall set the toll rates in accordance with California law, with the advice of a Binational Working Group, which will be made up of SANDAG and SICT representatives. SICT will sit as an advisory member to the BOD when it considers SR 11/Otay Mesa East toll setting matters. Mexico's Secretariat of Foreign Affairs (SRE) currently has an advisory seat on the BOD, which will remain unchanged.
Custodian	Once tolls are collected, they shall be deposited in a SANDAG account (Toll Revenues Fund) at NADBank.
Operations & Maintenance (O&M) Expenses	SANDAG will pay costs for certain approved tolling operations and maintenance expenses (Tolling O&M) from the Toll Revenues Fund in accordance with the Operations and Maintenance Expenses Budget (Tolling O&M Budget), which is approved by the Binational Working Group and ratified by the BOD annually. Remaining Toll Revenues will be deposited monthly into a joint SANDAG and SICT account (Net Revenues Fund) at NADBank. NADBank will split the funds in the Net Revenues Fund between SANDAG and Mexico monthly, as described below.
Allocation of Toll Revenues	Once toll collections begin, amounts in the Net Revenues Fund will be split 50/50 except that, in the early years of tolling operations to generate investment-grade debt service coverage to fund necessary reserves, Mexico is allowing SANDAG to keep an additional 10% (60/40) during the year (this split is referred to as the Modified 50/50). Once such reserves are sufficiently funded, SANDAG will repay Mexico such 10% annually (from remaining toll revenues, if available); any shortfall would incur interest at the Secured Overnight Financing Rate (SOFR) if not repaid annually. The Parties will transition from the Modified 50/50 split to a pure 50/50 split once, after ten years from Commencement of Tolling Operations, certain metrics are satisfied that demonstrate that <i>if</i> the Parties were sharing Net Toll Revenues on a pure 50/50 basis, SANDAG would receive \$2 for every \$1 in Annual Debt Service obligations that it has on its bonds and any TIFIA loan.
Dispute Resolution	Disputes will be resolved under a process similar to the dispute resolution process contained in United States-Mexico-Canada Agreement (also known as NAFTA 2.0) (i.e., a non-adjudicatory, progressive process).

The 2021 MOU and the 2022 Toll Agreement contemplated that the Parties would execute several other technical agreements including:

1. A Custodial Agreement with SICT and NADBank, to designate NADBank as the Custodian of the Toll Revenues and define NADBank's role;
2. Toll Governance Agreement with SICT to create and structure the Binational Working Group, which will make recommendations to the BOD regarding toll setting, toll policy, toll operations, and other matters;
3. An Operations and Maintenance Agreement regarding the Parties' obligations to operate and maintain Project components to support tolling; and
4. The Intelligent Transportation System Agreement relating to the procurement, construction, ownership, deployment, data management, operation, maintenance, and repair of the ITS Infrastructure.

The first two agreements are presently ready for the BOD's consideration and approval; the latter two are expected to be brought for consideration and approval in late 2024.

SANDAG and SICT also identified amendments to the 2022 Toll Agreement that will be beneficial to the Project's financing and operation. The most significant of those amendments include agreeing that the tolling arrangement will: 1) be completely electronic (i.e., cashless); and 2) rely on primary toll readers on the Mexico-side of the border with a secondary redundant system on the U.S.-side of the border. Implementing a pure cashless system will help streamline toll collections and increase efficiency through the crossing, which will help achieve the Project's goal of maintaining a 20 to 30-minute average wait time. The use of Mexico-side toll readers will permit greater flexibility in the use of collected tolls. SANDAG, Caltrans, and FHWA have recently finalized a Memorandum of Understanding that confirms that tolls collected from the Mexico-side equipment will not be subject to certain federal use restrictions and can be shared with Mexico.

The Borders Committee recommends that the BOD approve and authorize the execution and delivery of the Custodial Agreement, Toll Governance Agreement, and the Amended and Restated Toll Revenues Allocation Agreement. These agreements (referred to collectively in this report as the Binational Agreements) have been under development for nearly two years and have been reviewed by SANDAG's legal and financial teams.

Amended and Restated Toll Revenues Allocation Agreement (Toll Allocation Agreement or Amendment)

The Amended and Restated Toll Revenues Allocation Agreement amends and restates the 2022 Toll Agreement. The most significant changes include:

- The Parties will collect tolls exclusively through a cashless system. Under the 2022 Toll Agreement, the Parties had agreed to accept cash payments.
- SANDAG's tolling center will act as the exclusive Toll Transaction Location for the Project. It will rely on primary toll readers located on the Mexico-side of the border for information concerning vehicle entrance to and/or use of SR 11. Toll readers will exist on SR 11 to provide redundancy in case the Mexico-side equipment experiences technical difficulties or needs to be taken offline for repairs; any revenues generated from SR 11/U.S.-side readers when/if the Mexico-side readers are unable to properly do so are considered Restricted Toll Revenues, which will be placed into a Restricted Toll Revenues Account at NADBank, to be used generally for eligible, "off-the-top" Tolling O&M Expenses. However, if there are excess Restricted Toll Revenues, they may be transferred to SANDAG's bond trustee to pay Debt Service (a Restricted Toll Revenues Transfer), which would be offset in NADBank's split of Net Revenues for the month to ensure that, accounting for the Restricted Toll Revenues Transfer, the agreed split percentage would be achieved in effect. Several definitions have been added to the agreement to support this structure.
- Under the Modified 50/50, SANDAG was required to repay SICT the extra 10% at the end of each fiscal year or accrue interest on unpaid amounts at SOFR. The proposed amendment would change that structure to require that SICT receive earnings on such amount (either via actual investment earnings or as interest obligations payable by SANDAG). Specifically, the proposed amendment provides that SICT would receive any investment earnings actually generated on the 10% *during the year* while the bond trustee holds such amount in a newly created Indenture fund (the Coverage Fund) and does not otherwise use it to make Debt Service payments or fund-up required reserve accounts under the Indenture. If SANDAG does use any portion of such 10% *during the year* to make Debt Service payments or fund up reserve accounts under the Indenture, SANDAG would be responsible to pay SICT interest on such amounts at SOFR. Several definitions have been added to the agreement to support this structure.

Table 2: Other Significant Changes to the Toll Revenues Allocation Agreement

Topic	Summary of Term
Binational Working Group	The Binational Working Group (BWG) was previously referred to as a “non-governmental administrative body.” The Parties were considering a structure whereby the BWG would not be subject to California’s Brown Act. Under the Amendment and related Toll Governance Agreement, the BWG will be treated as an “advisory and administrative body,” subject to California’s Brown Act.
Title	References to “sharing” toll revenues have been changed to “allocating” toll revenues to be in better accord with FHWA’s view of relevant laws and regulations.
Custodian	References to NADBank include its successor under the Custodial Agreement, if a successor is ever appointed. Previously, there was no means for a successor custodian to be appointed.
Bond Issuances	Clarified that SANDAG may issue one or more bond series to finance the project. This clarifies that SANDAG is permitted to issue various types of bonds (e.g., taxable bonds, private activity bonds, and tax-exempt bonds); such flexibility will support the Project’s financing strategy.
Definition of Operations and Maintenance Expenses	The definition of Tolling O&M Expenses was expanded to include SANDAG’s costs for administration, processing, accounting, collection, enforcement, and marketing related to the Roadway Toll Collection System and/or Toll Revenues. Tolling O&M Expenses continue to be taken “off-the-top” from the Toll Revenues Fund prior to NADBank splitting the funds. The Parties continue to have flexibility to add additional costs in future agreements as the concept of Tolling O&M Expenses is further refined through development of the ITS Agreement.
TIFIA Loan	Updates were made throughout the agreement to note that the TIFIA loan is a possibility rather than a certainty. The financial team has not yet determined whether a TIFIA loan will be necessary.
True-Up Fund	A new custodial fund to be known as the “True-Up Fund” is created through which SANDAG pays Mexico all liabilities (e.g., the 10% at the end of the year, applicable interest, etc.). The fund will assist the parties in accounting for payment of such liabilities.
Trustee	The definition of SANDAG’s bond trustee has been expanded. Previously U.S. Bank Trust Company, National Association was listed. SANDAG plans to conduct a competitive procurement of the trustee and the new definition reflects that. The new definition includes a requirement (requested by Mexico) that any chosen trustee has capital stock and surplus aggregating at least half a billion dollars. SANDAG’s financial advisors indicate that this request comports with the stocks and surplus of past SANDAG bond trustees.
Exhibit A	Exhibit A is updated to reflect the current status of the Parties’ respective projects.

NADBank Custodial Agreement

The Custodial Agreement will be a binding agreement among SANDAG, SICT, and NADBank. Its purpose is to designate NADBank as the Custodian of the toll revenues and define NADBank's role as the Custodian. The Custodial Agreement will have the same duration as the Toll Allocation Agreement (40+ years) and create the various funds that will need to be maintained pursuant to the Toll Allocation Agreement (i.e., the Toll Revenues Fund; Restricted Toll Revenues Account; Net Revenues Fund; and the True-Up Fund). It also defines: the flow of such Funds, the process for payment or reimbursement of eligible Tolling O&M Expenses to SANDAG, the process for NADBank to split toll revenues, and the process for repayment of the 10% to SICT during the Modified 50/50 agreement (60/40). These funds and the related flow of toll revenues through the funds is described visually in Attachment 6. All funds will be held in a single account, owned by NADBank, at the U.S. Federal Reserve Bank. Table 3 shows other significant terms of the Custodial Agreement.

Table 3: Other Significant Terms of the Custodial Agreement

Topic	Summary Term
Toll Revenues Fund	Every Business Day that SANDAG receives toll revenues, they are deposited into the Toll Revenues Fund. SANDAG requisitions funds from the Toll Revenues Fund to pay Tolling O&M in accordance with the annual Tolling O&M Budget that is approved by the Binational Working Group and ratified by the SANDAG Board. These "off-the-top" Tolling O&M Expenses are paid before NADBank splits revenues monthly between SICT and SANDAG. SANDAG is the beneficial owner of this fund.
Restricted Toll Revenues Account	An account within the Toll Revenues Fund where any Restricted Toll Revenues (i.e., revenues generated from SR 11/U.S.-side readers when/if the Mexico-side readers are unable to properly do so) are held. Restricted Toll Revenues are primarily used to pay eligible O&M Expenses but may be transferred to SANDAG's bond trustee if: 1) all eligible O&M Expenses have been paid during the month; and 2) excess Restricted Toll Revenues remain (such a transfer is referred to as a Restricted Toll Revenues Transfer). Any Restricted Toll Revenues Transfer will be offset in NADBank's split of Net Revenues for the month to ensure that, accounting for the Restricted Toll Revenues Transfer to SANDAG's bond trustee, the agreed split percentage was achieved on net. SANDAG is the beneficial owner of this fund.
Net Revenues Fund	By the second to the last Business Day of every month, NADBank will move amounts in the Toll Revenues Fund to the Net Revenues Fund (less amounts needed for next month's Tolling O&M), which NADBank will split (either 60/40 or 50/50, depending on the current instruction from SICT and SANDAG). SANDAG and Mexico are the joint, beneficial owners of this fund.
True-Up Fund	All of SANDAG's transfers to make Mexico whole for the 10% (i.e., Coverage Fund annual transfers, monthly investment earnings on the Coverage Fund, Coverage Fund Shortfall Interest payments, Cumulative Shortfall Interest payments) will flow into this Fund for NADBank to account for and transmit to Mexico in accordance with SICT's instructions. SICT is the beneficial owner of this fund.
Investments	All funds are invested in accordance with both NADBank's and SANDAG's respective investment policies (e.g., Treasury Repos).

Topic	Summary Term
Account Information	NADBank will generate detailed monthly account statements related to the various funds and SANDAG and SICT will have the right to audit these documents.
Removal/ Resignation of NADBank	NADBank may not be removed or resign until a successor custodian is in place. The Parties will confer, at least every five years, to consider replacing the Custodian.
Compensation	NADBank's Custodial Fee will be \$25,000/year subject to annual adjustment, which is being finalized. NADBank will also be paid a \$25,000 fee for its initial costs to establish the Funds. NADBank may be paid for other reasonable expenses that are approved in the annual Tolling O&M Budget.
Indemnification	SANDAG agrees to indemnify NADBank concerning liabilities, etc., to third parties that arise out of the Custodial Agreement, except where such liabilities, etc. relate to or arise out of Custodian's negligence, willful misconduct, or lack of good faith. SANDAG also agrees to indemnify NADBank for any Requisition from the Toll Revenues Fund that is not in accordance with the annual Tolling O&M Budget.
Dispute Resolution	Disputes between NADBank and SANDAG will be subject to resolution in California Federal District Court (Southern District). Disputes that are between NADBank and SICT will be subject to Mexican law and resolved in Mexican Federal Courts in Mexico City. All other disputes (i.e., disputes among NADBank, SICT, and SANDAG, or between SANDAG and SICT) will be subject to a process similar to the dispute resolution process contained in United States-Mexico-Canada Agreement (also known as NAFTA 2.0) (i.e., a non-adjudicatory, progressive process). Prior to resorting to such processes, the Parties will attempt to resolve their disputes collaboratively.

Toll Governance Agreement

The Toll Governance Agreement will be a binding agreement between SANDAG and SICT with the same duration as the Toll Allocation Agreement (40+ years). This Toll Governance Agreement is unique in that it would create and structure a Binational Working Group (BWG), which would make recommendations to the BOD regarding toll setting and toll policy. Table 4 shows terms proposed in the Toll Governance Agreement.

Table 4: Other Significant Toll Governance Terms

Topic	Summary of Term
BWG Membership	Six voting members: three from SANDAG (one of whom will be appointed by Caltrans) and three from SICT. Each party may designate two alternates. Advisory members may be appointed in accordance with future bylaws but will not vote. Members to be appointed based on expertise and knowledge that each Party deems relevant (e.g., expertise in toll operations, finance, border capital planning, etc.).

Topic	Summary of Term
Meetings: Location, Applicable Law, and Travel	Meetings to take place in San Diego County, in accordance with the Brown Act. SICT voting members and up to two SICT advisory members will be reimbursed for their travel expenses to meetings from the Tolling O&M Budget, in accordance with SANDAG travel policies.
Officers	A Chair and Vice-Chair will be elected by and from BWG voting members and will alternate 2-year terms between SANDAG and SICT. Additional officers may be established by the BWG through its bylaws. BWG members may not hold more than one office at a time.
Agenda	The Chair and Vice Chair set the agenda.
Meeting Frequency	Meetings will happen at least twice each year unless the BWG agrees to meet less frequently. The Chair and Vice Chair may call meetings more frequently. The first meeting must happen no less than six months prior to Commencement of Toll Road Operations and with sufficient time to approve the initial Tolling O&M Budget, and make any necessary recommendations related to Toll Setting and Toll Policy.
BWG Voting	A quorum of 4 or more voting members of the BWG is required to conduct meetings. An affirmative vote of a majority of BWG members present at the meeting is required to take action. The BWG shall adopt bylaws and other policies or rules to carry out their responsibilities. Roberts Rules of Order shall apply to the conduct of the BWG meetings, unless different procedures are adopted.
BWG Responsibilities	The BWG's responsibilities include: approval of annual Tolling O&M Budget; advising the BOD on toll setting and toll policy at least every two years; making recommendations and conducting evaluations related to toll operations, including development of traffic congestion performance metrics; conducting audits, studies, and analysis related to toll operations; and evaluating the performance of NADBank as Custodian of the toll revenues.
Tolling O&M Budget	SANDAG submits the proposed Tolling O&M Budget to the BWG by Sept. 15 preceding the applicable Fiscal Year (July to June). The BWG reviews that budget and submits the approved Tolling O&M Budget to SANDAG's BOD by January 15 for ratification. SANDAG's BOD has the power to amend such budget for unforeseen expenses or inaccurate assumptions (up to 7.5% increase in any Fiscal Year) and also to avoid default under the Indenture or potential TIFIA Loan Agreement.
Toll Policy	The Project's Toll Policy will address issues such as hours of operations, eligible vehicles, violations and enforcement, toll discounts, promotions, and exemptions, interoperability, etc. The initial Toll Policy will be attached to the future ITS Agreement and adopted by the BOD. The BWG makes recommendations to the BOD at least every two years on the Project's Toll Policy.
Toll Setting	The BOD is required by law to review the Project's tolls every two years. The BWG will advise the BOD on such toll setting through a report. Pursuant to the Toll Allocation Agreement, SICT will sit as an advisory member to the BOD when it considers SR 11/Otay Mesa East toll setting matters.

Topic	Summary of Term
Dispute Resolution	Disputes would be handled the same way as they are in the Toll Allocation Agreement: pursuant to provisions similar to the USMCA, which provides for a non-adjudicatory, progression resolution process.

Next Steps

The Binational Agreements are currently in final reviews within the Mexican government and, in the case of the Custodial Agreement, also with NADBank. If such reviews are successful and the BOD also approves the Agreements, the Binational Agreements would then be executed.

The Project team is also pursuing the following activities:

- Updating the SR 11/OME Investment Grade Traffic and Revenue Study to enable the Project to obtain indicative ratings and finalize the Project's financing strategy.
- Finalizing the remaining binational technical agreements with SICT related to:
 - The Intelligent Transportation System
 - POE Operations and Maintenance
- On June 28, 2024, the BOD approved release of the CM/GC solicitation package for the OME POE and ancillary facilities.

John Kirk, General Counsel

- Attachments:
1. Draft Toll Allocation Agreement
 2. Draft NADBank Custodial Agreement
 3. Draft Toll Governance Agreement
 4. Resolution No. 2024-32 approving and authorizing the execution and delivery of the relevant agreements.
 5. October 14, 2022 Board Report: Toll Revenue Sharing Agreement
 6. NADBank Flow of Funds Visuals
 7. Discussion Memo

**(TOLL REVENUES ALLOCATION
AGREEMENT)**

AMENDED AND RESTATED AGREEMENT

BETWEEN

**THE MINISTRY OF INFRASTRUCTURE,
COMMUNICATIONS AND TRANSPORTATION
OF THE UNITED MEXICAN STATES,**

AND

**THE SAN DIEGO ASSOCIATION OF
GOVERNMENTS, CALIFORNIA, UNITED
STATES OF AMERICA**

**CONCERNING THE COLLECTION AND
ALLOCATION OF TOLL REVENUES
RELATING TO THE NEW INTERNATIONAL
BORDER CROSSING AND PORT MESA DE
OTAY II - OTAY MESA EAST**

The Ministry of Infrastructure, Communications and Transportation of the United Mexican States (“SICT”), through _____, Minister of Infrastructure, Communications and Transport, and the San Diego Association of Governments, a local agency of the State of California, United States of America (“SANDAG”), through Mario Orso, Chief Executive Officer, hereby enter into this Agreement Concerning the Collection and Allocation of Toll Revenues relating to the New International Border Crossing and Port Mesa de Olay II - Olay Mesa East (this “Agreement”).

RECITALS

CONSIDERING the Memorandum of Understanding between the Ministry of Foreign Affairs, the Ministry of Communications and Transport and the Ministry of Finance and Public Credit of the United Mexican States, the State Transportation Agency and the Department of Transportation of California, United States of America, and the San Diego Association of Governments with respect to the Mesa de Olay II - Olay Mesa East Border Crossing and Port and Access Roads to those Facilities, signed on June 28, 2021 (the “2021 MOU”);

**ACUERDO DE REPARTO DE INGRESOS POR
PEAJE**

ACUERDO MODIFICADO Y REEXPRESADO

ENTRE

**LA SECRETARÍA DE INFRAESTRUCTURA,
COMUNICACIONES Y TRANSPORTES DE LOS
ESTADOS UNIDOS MEXICANOS**

Y

**LA ASOCIACIÓN DE GOBIERNOS DE SAN
DIEGO, CALIFORNIA, ESTADOS UNIDOS DE
AMÉRICA**

**RELATIVO AL COBRO Y REPARTO DE LOS
INGRESOS POR PEAJE DEL NUEVO CRUCE Y
PUERTO FRONTERIZO INTERNACIONAL
MESA DE OTAY II - OTAY MESA EAST**

La Secretaría de Infraestructura, Comunicaciones y Transportes de los Estados Unidos Mexicanos (“SICT”), por conducto del C. _____, Secretario de Infraestructura, Comunicaciones y Transportes, y la Asociación de Gobiernos de San Diego, una agencia local del Estado de California, Estados Unidos de América (“SANDAG”), por conducto del señor Mario Orso, Presidente Ejecutivo, por este medio celebran el presente Acuerdo relativo al Cobro y Reparto de los Ingresos por Peaje del Nuevo Cruce y Puerto Fronterizo Internacional Mesa de Olay II - Olay Mesa East (el “Acuerdo”).

ANTECEDENTES

TENIENDO PRESENTE el Memorandum de Entendimiento entre la Secretaría de Relaciones Exteriores, la Secretaría de Comunicaciones y Transportes y la Secretaría de Hacienda y Crédito Público de los Estados Unidos Mexicanos, la Agencia de Transportes de California y el Departamento de Transportes de California de los Estados Unidos de América, y la Asociación de Gobiernos de San Diego sobre el Cruce y Puerto Fronterizo Mesa de Olay II - Olay Mesa East y las Vías de Acceso hacia esas

WHEREAS, the 2021 MOU memorialized the shared intention of the parties thereto to cooperate, as expeditiously as possible within the authority of each agency, in the development of an international border crossing and port, referred to as “Mesa de Otay II - Otay Mesa East,” and related access roads and facilities;

WHEREAS, the 2021 MOU further memorialized the intention of the parties thereto to work collaboratively to implement a traffic congestion management and revenue collection strategy based on variable tolling, with tolls collected for both northbound and southbound directions by way of a single collection point, to be located within the United States on California State Route 11;

WHEREAS, SICT and SANDAG (collectively, the “Parties”) continue to intend to work collaboratively to implement a traffic congestion management and revenue collection strategy based on variable tolling, with tolls collected for both northbound and southbound directions, by way of an exclusive collection system with components located within the United States and Mexico (defined herein as the “Roadway Toll Collection System”), and in the case of Mexico, only with a non-charging Toll reading system that shall serve as the primary Toll reading system for the Project (except when such system is not operating, during which time the Toll reading system on California State Route 11 shall serve as the primary Toll reading system for the Project until the Mexico-side Toll reading system is again operating);

WHEREAS, SANDAG and SICT have a joint desire to minimize the likelihood that Restricted Toll Revenues would be collected from SR 11 readers, and if such revenues are required to be collected, to ensure that such revenues are used to the greatest extent possible, to pay eligible Operations and Maintenance Expenses.

WHEREAS, pursuant to the 2021 MOU, the Parties plan to enter into future agreements related to Toll governance and Project operations and maintenance,

Instalaciones, firmado el 28 de junio de 2021 (el “MOU 2021”);

CONSIDERANDO que, en el MOU 2021 se estableció la intención de las partes para cooperar de la manera más expedita posible y, en el ámbito de las atribuciones de cada autoridad, en el desarrollo del cruce y puerto fronterizo internacional, denominado “Mesa de Otay II - Otay Mesa East” y las vías de acceso e instalaciones conexas;

CONSIDERANDO que, en el MOU 2021 también se estableció la intención de las partes colaborar en la implementación de una estrategia para la administración de la congestión del tránsito y de recaudación de ingresos con base en peajes variables, cuya cuota será recaudada tanto en dirección norte como sur a través de un único punto de cobro, que estaría ubicado dentro los Estados Unidos de América en la Ruta 11 del Estado de California;

CONSIDERANDO que SICT y SANDAG (referidas conjuntamente como, las “Partes”) continúan teniendo la intención de colaborar para implementar una estrategia de gestión de congestión de tráfico y recaudación de ingresos basada en peajes variables, con peajes recolectados en ambas direcciones, por medio de un sistema de recaudación exclusivo con elementos ubicados en los Estados Unidos y México (tal y como se define en el presente, el “Sistema de Cobro de Peaje en Autopista”), y en el caso de México, solo con un sistema de lectura de Peajes que no realiza cobros, que funcionará como el sistema principal de lectura de Peajes para el Proyecto (excepto cuando dicho sistema no esté operativo, durante lo cual el sistema de lectura de Peajes en la Ruta Estatal 11 de California servirá como el sistema de lectura de peajes principal para el Proyecto hasta que el sistema de lectura de Peajes del lado de México vuelva a estar operativo);

CONSIDERANDO que, SANDAG y SICT tienen el deseo conjunto de minimizar la probabilidad de que se recauden Ingresos de Peaje Restringidos de los lectores de la Ruta Estatal 11, y en caso de que sea necesario recaudar dichos ingresos, asegurar que estos se utilicen en la mayor medida posible para pagar Gastos de Operación y Mantenimiento elegibles.

CONSIDERANDO que, de conformidad con el MOU 2021, las Partes tienen planeado celebrar acuerdos futuros con respecto a la gobernanza del Peaje, así

which shall create a Binational Working Group to act as an advisory and administrative body, for matters related to Toll setting, Toll collection and distribution, traffic congestion and traffic flow management;

WHEREAS, the 2021 MOU further memorialized the intention of the parties thereto to properly allocate such toll revenue in accordance with a future, binding Revenue Sharing Agreement;

WHEREAS, the Parties acknowledge and represent that it is in the best interest of the Project for the Parties to allocate Toll revenues on an equitable basis, reflecting the Operation and Maintenance Expenses associated with the collection of such toll revenues and the security and pledged revenue coverage requirements of the debt to be incurred solely by SANDAG to finance the acquisition and construction of certain portions of the Project;

WHEREAS, given the specifics of the Project, SICT acknowledges and represents that the revenue allocation provisions, Tolling operations, variable Tolling, Toll-setting policy and all other undertakings and understandings assumed under this Agreement provide, to the best of its knowledge, the most cost effective and best conditions for SICT and the people of the United Mexican States as it pertains to the Project and the subject matter hereto;

WHEREAS, given the specifics of the Project, SANDAG acknowledges and represents that the revenue allocation provisions, Tolling operations, variable Tolling, Toll-setting policy and all other undertakings and understandings assumed under this Agreement provide, to the best of its knowledge, the most cost effective and best conditions for SANDAG and the people of California and the United States of America as it pertains to the Project and the subject matter hereto;

WHEREAS, the purposes of the North American Development Bank ("NADBank"), a binational financial institution governed equally by the federal government of the United States of America and by the federal government of the United Mexican States,

como la operación y mantenimiento del Proyecto, creando así un Grupo de Trabajo Binacional, el cual fungiría como órgano administrativo y consultivo, para asuntos relacionados con la fijación de Peajes, el cobro y el reparto de Peajes, la congestión del tráfico y el manejo del flujo de tráfico.;

CONSIDERANDO que, el MOU 2021 también reflejaba la intención de las partes de asignar adecuadamente dichos ingresos de peaje de conformidad con un futuro Acuerdo de Reparto de Ingresos vinculante;

CONSIDERANDO que, las Partes reconocen y declaran que lo mejor para el Proyecto es que las Partes repartan los ingresos por Peaje de manera equitativa, reflejando los Gastos de Operación y Mantenimiento asociados con el cobro de dichos ingresos por Peaje, así como los requisitos de seguridad y cobertura de los ingresos pignorados, de la deuda que debe contraer únicamente SANDAG para financiar la adquisición y construcción de ciertas partes del Proyecto;

CONSIDERANDO que, dadas las especificaciones del Proyecto, la SICT reconoce y declara que las disposiciones sobre el reparto de los ingresos, operaciones de Peaje, Peaje variable, política de fijación de Peaje y todos los demás compromisos y entendimientos asumidos en virtud del presente Acuerdo, brindan a su leal saber y entender, las mejores condiciones y la mejor relación costo-beneficio para SICT y los Estados Unidos Mexicanos, en lo que respecta al Proyecto y al objeto del mismo;

CONSIDERANDO que, dadas las especificaciones del Proyecto, SANDAG reconoce y declara que las disposiciones sobre el reparto de los ingresos, operaciones de Peaje, Peaje variable, política de fijación de Peaje y todos los demás compromisos y entendimientos asumidos en virtud del presente Acuerdo, brindan a su leal saber y entender, las mejores condiciones y la mejor relación costo-beneficio para SANDAG, los habitantes de California y los Estados Unidos de América, en lo que respecta al Proyecto y al objeto del mismo;

CONSIDERANDO que, los propósitos del Banco de Desarrollo de América del Norte ("NADBank"), institución financiera binacional regulada paralelamente por el gobierno federal de los Estados Unidos de América y por el gobierno federal de los

include: (i) fostering the investment of public and private capital contributing to its purposes; (ii) fostering private investment in projects, enterprises and activities in accordance with its purposes and supplementing private investment when private capital is not available on reasonable terms and conditions; and (iii) providing, under the direction of its Board of Directors, technical and other assistance for the financing and implementation of plans and projects;

WHEREAS, in accordance with its purposes, NADBank may cooperate, when appropriate, with national and international institutions, as well as private funds that provide investment capital, SANDAG and SICT have decided to invite NADBank to participate in the Project, through the deposit and distribution of Toll Revenues as provided below.

WHEREAS, that on October 24, 2022, pursuant to the 2021 MOU a certain agreement was entered into between SICT and SANDAG regarding the collection and sharing of toll revenues relating to the new international border crossing and port Mesa de Otay II – Otay Mesa East, which was registered by the Ministry of Foreign Affairs (*Secretaría de Relaciones Exteriores*) (“SRE”) (the “Original Agreement”).

WHEREAS it is the intention of the Parties to amend and completely restate the Original Agreement on the terms contained herein.

REPRESENTATIONS

I. SICT hereby represents to SANDAG:

I.1. That it is an Agency of the Federal Executive Branch, which has the authority to enter into this Agreement, in accordance with the provisions set forth in articles 90 of the Constitution of the United Mexican States (*Constitución Política de los Estados Unidos Mexicanos*); 1, 2, section I, 26 and 36 sections XXI, XXII, XXIV, XXVII of the Organic Law of the Federal Public Administration (*Ley Orgánica de la Administración Pública Federal*); is able to formulate and conduct policies and programs for the development

Estados Unidos Mexicanos, incluyen: (i) promover la inversión de capital público y privado que contribuya a sus propósitos; (ii) promover la inversión privada en proyectos, empresas y actividades que contribuyan a sus propósitos y complementar las inversiones privadas cuando el capital privado no se encuentre disponible en términos y condiciones razonables; y (iii) proporcionar, bajo la dirección de su Consejo Directivo, asistencia técnica para el financiamiento y la ejecución de planes y proyectos;

CONSIDERANDO que, de conformidad con sus propósitos, el NADBank podrá cooperar cuando proceda, con instituciones nacionales e internacionales, así como fuentes privadas que provean capital de inversión; SANDAG y la SICT han decidido invitar al NADBank a participar en el Proyecto, mediante el depósito y reparto de los Ingresos por Peaje en los términos que más adelante se describen;

CONSIDERANDO que, el 24 de octubre de 2022, conforme al MOU de 2021, fue celebrado el acuerdo entre la Secretaría de Infraestructura, Comunicaciones y Transportes de los Estados Unidos Mexicanos y la Asociación de Gobiernos de San Diego California, Estados Unidos de América relativo al cobro y distribución de los ingresos por peaje del nuevo cruce y puerto fronterizo internacional Mesa de Otay II – Otay Mesa East, el cual fue inscrito en el registro que al efecto lleva la Secretaría de Relaciones Exteriores (“SRE”) (el “Acuerdo Original”); y

CONSIDERANDO que, es la intención de las partes modificar y re-expresar integralmente el Acuerdo Original en los términos contenidos en el presente.

DECLARACIONES

I. SICT, por medio del presente, declara a SANDAG:

I.1 Que es una Dependencia del Poder Ejecutivo Federal, que cuenta con las atribuciones necesarias para celebrar el presente Acuerdo, de conformidad con lo señalado en los artículos 90 de la Constitución Política de los Estados Unidos Mexicanos; 1º, 2º, fracción I, 26 y 36 fracciones XXI, XXII, XXIV, XXVII de la Ley Orgánica de la Administración Pública Federal; tiene entre sus atribuciones la de formular y conducir las políticas y programas para el desarrollo del transporte y las comunicaciones de acuerdo con las necesidades

of transportation and communications in accordance with the needs of the country; build and maintain federal roads and bridges, as well as other authorities expressly conferred by applicable laws and ancillary regulations.

I.2. That Jorge Nuño Lara, the Minister of Infrastructure, Communications and Transportation, has the authority to enter into this Agreement, pursuant to the provisions of article 2, section I and 4 of the Internal Regulations of the Ministry of Infrastructure, Communications and Transportation (*Reglamento Interior de la Secretaría de Infraestructura, Comunicaciones y Transportes*).

I.3 That for the purposes of this Agreement, its address to receive all types of notifications is the one located at Insurgentes Sur number 1089, ground floor, Colonia Noche Buena, Alcaldía Benito Juárez, Zip Code 03720, in Mexico City.

II. SANDAG hereby represents to SICT:

II.1 That it is a local agency of the State of California, which has authority to enter this Agreement in accordance with the provisions of the San Diego Regional Transportation Consolidation Act (California Public Utilities Code Section 132350 *et seq.*) and the Otay Mesa East Toll Facility Act (California Streets and Highways Code Sections 31460 *et seq.*), and the amendments thereto.

II.2. That Mario Orso, the Chief Executive Officer of SANDAG, has the authority to enter into this Agreement.

II.3 That for the purposes of this Agreement, its address to receive all types of notifications is the one located at 401 B Street, Suite 800, Attention: General Counsel, San Diego, California 92101.

NOW, THEREFORE, the Parties agree as follows:

del país; construir y conservar los caminos y puentes federales, así como las demás facultades que expresamente le confieren las leyes y reglamentos aplicables.

I.2 Que el C. Jorge Nuño Lara, Secretario de Infraestructura, Comunicaciones y Transportes, cuenta con las facultades necesarias para celebrar el presente Acuerdo, en términos de lo dispuesto por los artículos 2º, fracción I y 4º del Reglamento Interior de la Secretaría de Infraestructura, Comunicaciones y Transportes.

I.3 Que, para efectos del presente Acuerdo, señala como domicilio para recibir todo tipo de notificaciones, el ubicado en Insurgentes Sur número 1089, planta baja, Colonia Noche Buena, Alcaldía Benito Juárez, Código Postal 03720, en la Ciudad de México.

II. SANDAG, por medio del presente declara a SICT:

II.1 Que es una agencia local del Estado de California, que cuenta con las atribuciones necesarias para celebrar el presente Acuerdo de conformidad con lo previsto en la Ley de Consolidación del Transporte Regional de San Diego (*San Diego Regional Transportation Consolidation Act*), (Código de Servicios Públicos de California, Sección 132350 *et seq*) (*California Public Utilities Code Section 132350 et seq*) y la Ley de Implementación de Peaje Otay Mesa East (*Otay Mesa East Toll Facility Act*) (Código de Calles y Carreteras de California Secciones 31460 *et seq.*) (*California Streets and Highways Code Sections 31460 et seq*), y sus modificaciones al mismo.

II.2. Que el Mario Orso, el Presidente Ejecutivo (*Chief Executive Officer*) de SANDAG, cuenta con las facultades necesarias para celebrar el presente Acuerdo.

II.3 Que, para efectos del presente Acuerdo, señala como domicilio para recibir todo tipo de notificaciones, el ubicado en 401 B Street, Suite 800, ATTN: General Counsel, San Diego, California 92101.

AHORA, POR TANTO, las Partes acuerdan lo siguiente:

ARTICLE I

INITIAL PROVISIONS AND DEFINITIONS

Section 1.01 Toll Allocation and Collection Agreement. This Agreement is hereby acknowledged by the Parties as the “Toll Sharing Agreement” referenced in Section II of the 2021 MOU.

Section 1.02 Scope of Agreement. The purpose of this Agreement is (i) to establish that the Project will be operated through an exclusive facility that includes the Roadway Toll Collection System and the Toll Transaction Location, (ii) to establish the role of the Roadway Toll Collection System and the Toll Transaction Location with respect to the Project; and (iii) to govern the allocation of Toll Revenues between SANDAG and SICT. Matters concerning Tolling operations, variable Tolling, Toll-setting policy, and other aspects of the Project, to the extent not addressed herein, shall be governed by future agreements between SANDAG and SICT.

Section 1.03 Delegated Authority.

(a) Each Party shall delegate regulatory and administrative authority to the corresponding public officials and ensure that such act in accordance with such Party’s powers and fulfill such Party’s obligations as set forth in this Agreement in the exercise of that authority.

(b) For purposes of this Agreement, SICT shall designate in writing to SANDAG an authorized person (the “Mexican Representative”) who shall serve as the authorized representative of SICT and as the point of contact for all communications with SANDAG related to the Project; and for this purpose, appoints the Minister of Infrastructure, Communications and Transportation, or his or her designee.

(c) For purposes of this Agreement, SANDAG shall designate in writing to SICT, an authorized person (the “SANDAG Representative”) who shall serve as the authorized representative of SANDAG and as the point of contact for all communications with SICT related to the Project; and for this purpose, appoints its Chief Executive Officer, or his or her designee.

ARTÍCULO I

DISPOSICIONES INICIALES Y DEFINICIONES

Sección 1.01 Acuerdo de Cobro y Reparto de Ingresos. Las Partes reconocen este Acuerdo como el “Acuerdo de Distribución de Ingresos” mencionado en la Sección II del MOU 2021

Sección 1.02 Alcance del Acuerdo. Este Acuerdo tiene como propósito: (i) establecer que el Proyecto será operado, a través de una instalación exclusiva, que incluye el Sistema de Cobro de Peaje en Autopista y la Zona de Cobro de Peaje, (ii) establecer las funciones del Sistema de Cobro de Peaje en Autopista y la Zona de Cobro de Peaje en relación con el Proyecto, y (iii) regular el reparto de los Ingresos por Peaje entre SANDAG y la SICT. Los asuntos relacionados con las operaciones, el Peaje variable, la política de fijación de Peaje y otros aspectos del Proyecto, que no se encuentren previstos en el presente Acuerdo, se regirán por acuerdos futuros entre SANDAG y la SICT.

Sección 1.03 Funcionarios Autorizados.

(a) Cada Parte delegará la facultad regulatoria y administrativa a los funcionarios públicos correspondientes y se asegurarán de que actúen de conformidad con las atribuciones de esa Parte, y cumplan con las obligaciones de esa Parte conforme se encuentran establecidas en el presente Acuerdo, en ejercicio de esa facultad.

(b) Para los propósitos del presente Acuerdo, la SICT designará por escrito, en beneficio de SANDAG, a una persona autorizada (el “Representante Mexicano”) quien fungirá como el representante autorizado de la SICT y como contacto para todas las comunicaciones con SANDAG en relación con el Proyecto, y para tal efecto, designa al Secretario de Infraestructura Comunicaciones y Transportes, o a la persona que éste designe.

(c) Para los propósitos del presente Acuerdo, SANDAG designará por escrito, en beneficio de la SICT, a una persona autorizada (el “Representante SANDAG”) quien fungirá como el representante autorizado de SANDAG y como contacto para todas las comunicaciones con la SICT en relación con el

Section 1.04 Definitions.

(a) For purposes of this Agreement, unless otherwise provided:

“Actual Coverage Fund Amount” means the total cumulative amount of Remaining Funds deposited in the Coverage Fund during the Fiscal Year pursuant to Section 3.03(a)(ii) hereof, up to a maximum of the Scheduled Coverage Fund Amount, exclusive of investment earnings and necessarily less any Interim Withdrawals, which shall be calculated on the last Business Day of each month during the Fiscal Year.

“Annual Debt Service” means the combined scheduled principal and interest due and to become due in any Fiscal Year on the outstanding Bonds and the TIFIA Loan.

“Binational Working Group” means the work group made up of the representatives of SICT and SANDAG, having the purposes and functions described in Article III of this Agreement.

“Bonds” means the Toll revenue bonds and related obligations to be issued or incurred in one or more series from time to time, and payable from and secured by SANDAG Net Revenues, pursuant to the Indenture for the purpose of financing a portion of the SANDAG Construction Project, as described in Exhibit A hereto.

“Business Day” means any day, other than a Saturday, Sunday or other day on which the principal office of the Trustee or NADBank is authorized or obligated by law or executive order to be closed.

“Commencement of Toll Road Operations” means the date to be agreed upon by the Parties which shall be after substantial completion of the Construction Project, the exchange of diplomatic notes regarding the commencement of operations, the completion of the Intelligent Transportation System (“ITS”) testing to the satisfaction of the Parties and necessary agencies, and

Proyecto, y para tal efecto, designa al Presidente Ejecutivo, o la persona que éste designe.

Sección 1.04 Definiciones.

(a) Para los propósitos del presente Acuerdo, a menos que se disponga lo contrario:

“Monto del Fondo de Cobertura Real” significa el importe acumulado total de los Fondos Remanentes depositados en el Fondo de Cobertura durante el Año Fiscal de conformidad con la Sección 3.03(a)(ii) del presente, hasta un máximo del Monto del Fondo de Cobertura Programado, excluyendo ganancias de inversión y necesariamente menos cualquier Retiro Provisional, que se calculará el último Día Hábil de cada mes durante el Año Fiscal.

“Servicio Anual de la Deuda” significa la suma del principal y los intereses vencidos y por vencer en cualquier Año Fiscal, previstos para los Bonos en circulación y el Crédito TIFIA.

“Grupo de Trabajo Binacional” significa el grupo de trabajo integrado por los representantes de la SICT y de SANDAG, el cual tendrá los propósitos y funciones que se describen en el Artículo III del presente Acuerdo.

“Bonos” significa los bonos de ingreso de Peaje y obligaciones conexas (de deuda) que se emitan o contraigan en una o más series de tiempo en tiempo, y que sean pagaderos y garantizados con los Ingresos Netos de SANDAG, de conformidad con el Contrato de Fideicomiso para fines de financiamiento de una parte del Proyecto de Construcción de SANDAG, según se describe en el Anexo A del presente.

“Día Hábil” significa cualquier día, que no sea sábado, domingo u otro día en el cual la oficina principal del Fiduciario o del NADBank esté autorizada u obligada por ley u orden ejecutiva a cerrar.

“Inicio de Operaciones de la Autopista de Peaje” significa la fecha a ser acordada por las Partes, posterior a la finalización sustancial del Proyecto de Construcción, al intercambio de notas diplomáticas relativas al inicio de operaciones, al cumplimiento de las pruebas de los Sistemas Inteligentes de Transporte (“ITS”) a satisfacción de las Partes y las entidades

any other requirements determined necessary by the Parties.

“Construction Project” means those components of the Project so described in Exhibit A hereto.

“Coverage Fund” means the fund by that name to be created under the Indenture and held by the Trustee, to be funded and applied as described in Section 3.03 hereof.

“Coverage Fund Shortfall” means the difference, if any, between the Scheduled Coverage Fund Amount and the Actual Coverage Fund Amount, which shall be calculated on the last Business Day of each month during the Fiscal Year.

“Coverage Fund Shortfall Interest” means the cumulative amount of interest accrued at the Stated Rate during the Fiscal Year on the sum of (i) the unpaid Coverage Fund Shortfall plus (ii) the total unpaid Coverage Fund Shortfall Interest, if any, attributable to each month of the Fiscal Year prior to the month that such amount is calculated. Coverage Fund Shortfall Interest shall be calculated on the last Business Day of each month during the Fiscal Year.

“Cumulative Shortfall Liability” means the total unpaid Shortfall Liability at the end of each Fiscal Year for the current and all prior Fiscal Years.

“Custodial Agreement” means the Custodial Agreement to be entered into by SICT, SANDAG and NADBank as custodian relating to the allocation of Toll Revenues described in Section 3.03 hereof, and any amendments or supplements thereto entered into in accordance with its terms.

“Effective Date” means the date set forth in Section 5.01.

“Fiscal Year” means the annual period from July 1 to June 30.

“Indenture” means the Indenture of Trust to be entered into by SANDAG and the Trustee providing for the issuance of the Bonds, and any amendments or

necesarias, y a cualquier otro requisito que las Partes determinen necesario.

“Proyecto de Construcción” significa aquellos componentes del Proyecto descritos en el Anexo A del presente.

“Fondo de Cobertura” significa el fondo con ese nombre que se creará en virtud del Contrato de Fideicomiso y que será mantenido por el Fiduciario, para ser financiado y aplicado según se describe en la Sección 3.03 del presente.

“Déficit del Fondo de Cobertura” significa la diferencia, si la hubiere, entre el Monto del Fondo de Cobertura Programado y el Monto del Fondo de Cobertura Real, que se calculará el último Día Hábil de cada mes durante el Año Fiscal.

“Intereses por Déficit del Fondo de Cobertura” significa el monto acumulado de intereses devengados a la Tasa de Interés Establecida durante el Año Fiscal sobre la suma de (i) el Déficit del Fondo de Cobertura no pagado más (ii) el total de los Intereses por Déficit del Fondo de Cobertura no pagados, si los hubiera, atribuibles a cada mes del Año Fiscal anterior al mes en que se calcula dicho monto. Los Intereses por Déficit del Fondo de Cobertura se calcularán el último Día Hábil de cada mes durante el Año Fiscal.

“Responsabilidad por Déficit Acumulativo” significa el total de la Responsabilidad por Déficit no pagada al final de cada Año Fiscal para el año en curso y todos los Años Fiscales anteriores.

“Contrato de Depósito” significa el Contrato de Depósito a ser celebrado por SICT, SANDAG y NADBank como depositario en relación con el reparto de los Ingresos por Peaje descrita en la Sección 3.03 del presente, y aquellas modificaciones o enmiendas que se celebren de conformidad con sus términos.

“Fecha de Entrada en Vigor” significa la fecha establecida en la Sección 5.01.

“Año Fiscal” significa el período anual del 1 de julio al 30 de junio de cada año calendario.

“Contrato de Fideicomiso” significa el Contrato de Fideicomiso a ser celebrado por SANDAG y el Fiduciario en relación con la emisión de los Bonos, y

supplements thereto entered into in accordance with its terms.

“Interim Withdrawal” means the amounts withdrawn by the Trustee from the Coverage Fund to make required payments or deposits pursuant to the Indenture or the TIFIA Loan Agreement in accordance with Section 3.03(d) hereof.

“ITS Infrastructure” means all components of the Intelligent Transportation System to be deployed as part of the Project, including roadway tolling infrastructure and back-office management applications, border crossing traffic management systems, border wait time systems, traffic detection sensors, roadway lane management and variable message signs, data sharing and communications systems, and related hardware, software, and other intellectual property. For purposes of clarity, ITS Infrastructure includes such components as are part of the Roadway Toll Collection System and the Toll Transaction Location.

“NADBank” means the North American Development Bank, or its successor as custodian under the Custodial Agreement.

“Net Revenues” means Toll Revenues (excluding Restricted Toll Revenues) less Operation and Maintenance Expenses.

“Net Revenues Fund” means the fund by that name described in Section 3.02 hereof.

“Net Revenues received by SICT for the benefit of the Government of the United Mexican States” means (i) prior to the modification described in paragraph (h) of Section 3.03 hereof, that 40% (forty percent) allocation of Net Revenues received by NADBank, which is to be transferred by NADBank to SICT for the benefit of the United Mexican States pursuant to paragraph (a) of Section 3.03 hereof, and (ii) after the modification described in paragraph (h) of Section 3.03 hereof, that 50% (fifty percent) allocation of Net Revenues received by NADBank, which is to be transferred by NADBank to SICT for the benefit of the United Mexican States pursuant to paragraph (a) of Section 3.03 hereof.

aquellas modificaciones o enmiendas que se celebren de conformidad con sus términos.

“Retiro Provisional” significa los importes retirados por el Fiduciario del Fondo de Cobertura para efectuar los pagos o depósitos requeridos en virtud del Contrato de Fideicomiso o del Contrato de Crédito TIFIA de conformidad con la Sección 3.03(d) del presente Acuerdo

“Infraestructura ITS” significa todos los componentes del Sistema Inteligente de Transporte que se implementará como parte del Proyecto, incluyendo la infraestructura de Peaje de autopistas y cobros de gestoría, los sistemas de gestión del tráfico en los cruces fronterizos, los sistemas de tiempo de espera en las fronteras, los sensores de detección de tráfico, la gestión de carriles en autopistas y letreros de mensajes variables, sistemas de intercambio de datos y comunicaciones, y hardware, software y cualquier otra propiedad intelectual conexos. Para mayor claridad, la Infraestructura ITS incluye componentes que forman parte del Sistema de Cobro de Peaje en Autopista y la Zona de Cobro de Peaje.

“NADBank” significa el Banco de Desarrollo de América del Norte como depositario conforme al Contrato de Depósito.

“Ingresos Netos” significa los Ingresos por Peaje (exceptuando los Ingresos de Peaje Restringidos) menos los Gastos de Operación y Mantenimiento.

“Cuenta de Ingresos Netos” significa la cuenta de dicho nombre previsto en la Sección 3.02 del presente.

“Ingresos Netos recibidos por la SICT para beneficio del Gobierno de los Estados Unidos Mexicanos” significa (i) antes de la modificación descrita en la Sección 3.03, inciso (h), el 40% (cuarenta por ciento) de los Ingresos Netos recibidos por NADBank, que serán transferidos por NADBank a SICT para beneficio de los Estados Unidos Mexicanos, de conformidad con el inciso (a) de la Sección 3.03 del presente, y (ii) después de la modificación descrita en la Sección 3.03, inciso (h), el 50% (cincuenta por ciento) de los Ingresos Netos recibidos por NADBank, que serán transferidos por NADBank a SICT para beneficio de los Estados Unidos Mexicanos, de conformidad con el inciso (a) de la Sección 3.03 del presente

“Operation and Maintenance Expenses” means all reasonable and documented current expenses incurred and paid or payable by SANDAG for (1) operations, maintenance, service, repair, and replacement costs for the Roadway Toll Collection System, the Toll Transaction Location, and certain other components of the Project as the Parties may agree and (2) the administration, processing, accounting, collection, enforcement, and marketing related to the Roadway Toll Collection System and/or Toll Revenues.

“Operation and Maintenance Expenses Budget” means the budget for Operation and Maintenance Expenses to be prepared annually by SANDAG and approved by the Binational Working Group, which approval shall not be unreasonably withheld.

“Pro Forma Net Revenues” means 50% (fifty percent) of Net Revenues received or projected to be received by NADBank during any Fiscal Year, taking into consideration any Allocation Adjustment Direction provided under Section 3.06. This definition is intended to be used solely for the purpose of making the calculations described in Section 3.04 hereof.

“Project” means, collectively, the international border crossing referred to as “Mesa de Otay II - Otay Mesa East” and related access roads and facilities, including but not limited to the access road on the United States side known as California State Route 11 or SR-11, the access road on the Mexican side known as Blvd. Las Torres, the Roadway Toll Collection System and the ITS Infrastructure, all as more particularly shown as Exhibit A hereto.

“Rating Agency” means any of S&P Global Ratings, Moody’s Investors Service or Fitch Ratings.

“Remaining Funds” means the funds remaining at the end of each month or each Fiscal Year, as applicable, after SANDAG Net Revenues are applied to satisfy all prior payments or deposits for operations and maintenance expenses to be paid by the Trustee under the Indenture, debt service and reserve requirements with respect to the Bonds and the TIFIA Loan, and

“Gastos de Operación y Mantenimiento” significa todos los gastos corrientes razonables y documentados, incurridos y pagados o a ser pagados por SANDAG en relación con (1) la operación, mantenimiento, servicio, reparación y costos de remplazo del Sistema de Cobro de Peaje en Autopista y la Zona de Cobro de Peaje y otros componentes del Proyecto según lo acuerden las Partes y (2) la administración, procesamiento, contabilidad, recaudación, ejecución y publicidad en relación con el Sistema de Cobro de Peaje en Autopista y/o los Ingresos por Peaje.

“Presupuesto de los Gastos de Operación y Mantenimiento” significa el presupuesto para los Gastos de Operación y Mantenimiento, a ser preparado anualmente por SANDAG y aprobado por Grupo de Trabajo Binacional, y cuya aprobación no se denegará injustificadamente.

“Ingresos Netos Pro-Forma” significa el 50% (cincuenta por ciento) de los Ingresos Netos recibidos o proyectados a ser recibidos por NADBank durante cualquier Año Fiscal, tomando en consideración cualquier Instrucción de Ajuste de Asignación de conformidad con la Sección 3.06. Es la intención de las Partes que esta definición se utilice únicamente con el propósito de hacer los cálculos previstos en la Sección 3.04 del presente.

“Proyecto” significa, colectivamente, el cruce fronterizo internacional denominado “Mesa de Otay II - Otay Mesa East” y las vías de acceso e instalaciones conexas, incluyendo, pero sin limitarse a la carretera de acceso en el lado estadounidense conocida como Ruta Estatal de California 11 o SR-11, la vía de acceso en el lado mexicano conocida como Blvd. Las Torres, el Sistema de Cobro de Peaje en Autopista y la Infraestructura ITS, como se muestra detalladamente en el Anexo A.

“Agencia de Calificación” significa cualquiera de las agencias S&P Global Ratings, Moody's Investors Service o Fitch Ratings.

“Ingresos Remanentes” significa los ingresos remanentes al final de cada mes o de cada Año Fiscal, según corresponda, después de que los Ingresos Netos de SANDAG se destinen para el cumplimiento de todos los pagos o depósitos previos para Gastos de Operación y Mantenimiento, a ser pagados por el Fiduciario de conforme al Contrato de Fideicomiso, servicio de deuda

operating, capital and repair and rehabilitation reserves required under the Indenture and the TIFIA Loan Agreement.

“Restricted Toll Revenues” means that portion of Toll Revenues, if any, generated from tags read through the Toll Reading System on the United States side of the Project collected during any period that the components of the Toll Reading System on the Mexico-side of the Project are not operating properly.

“Restricted Toll Revenues Account” means the account by that name established as a separate account within the Toll Revenues Fund and described in Section 3.02 hereof.

“Roadway Toll Collection System” means roadway and roadside Toll collection equipment, including without limitation the Toll Reading System, and related assets and software licenses.

“SANDAG Construction Project” means that portion of the Construction Project constructed and to be constructed by or on behalf of SANDAG, as described in Exhibit A hereto.

“SANDAG Net Revenues” means (i) prior to the modification described in paragraph (h) of Section 3.03 hereof, that 60% (sixty percent) allocation of Net Revenues received by NADBank, which is to be transferred by NADBank to the Trustee pursuant to paragraph (a) of Section 3.03 hereof, and (ii) after the modification described in paragraph (h) of Section 3.03 hereof, that 50% (fifty percent) allocation of Net Revenues received by NADBank, which is to be transferred by NADBank to the Trustee pursuant to paragraph (a) of Section 3.03 hereof.

“Scheduled Coverage Fund Amount” means an amount equal to 10% of the aggregate, cumulative Net Revenues distributed by NADBank for the Fiscal Year pursuant to Section 3.03(a) hereof, which shall be calculated on the last Business Day of each month during such Fiscal Year.

“Shortfall Liability” means the sum of (i) the aggregate unpaid Coverage Fund Shortfall during the Fiscal Year

y requisitos de reserva con respecto a los Bonos y el Crédito TIFIA, y reservas de operación, capital y reparación y rehabilitación requeridas en virtud del Contrato de Fideicomiso y el Contrato de Crédito TIFIA.

“Ingresos de Peaje Restringidos” significa la porción de los Ingresos de Peaje, si los hubiere, generados por la lectura de los *tags* a través del Sistema de Lectura de Peaje en el lado de Estados Unidos del Proyecto recolectados durante cualquier período en que los componentes del Sistema de Lectura de Peaje en el lado de México no estén funcionando correctamente.

“Cuenta de Ingresos de Peaje Restringidos” significa la cuenta con ese nombre establecida como una cuenta separada dentro del Fondo de Ingresos de Peaje y descrita en la Sección 3.02 del presente.

“Sistema de Cobro de Peaje en Autopista” significa el equipo de cobro de Peaje en carretera y autopista, incluyendo sin limitar, el Sistema de Lectura de Peaje; y activos relacionados y licencias de software.

“Proyecto de Construcción de SANDAG” significa la parte del Proyecto de construcción construido y por construir por o en nombre de SANDAG, tal y como se describe en el Anexo A del presente documento.

“Ingresos Netos de SANDAG” significa (i) antes de la modificación descrita en la Sección 3.03, inciso (h), la participación del 60% (sesenta por ciento) de los Ingresos Netos recibidos por NADBank, que NADBank transferirá al Fiduciario de conformidad con el inciso (a) de la Sección 3.03 del presente, y (ii) después de la modificación descrita en la Sección 3.03, inciso (h), una participación del 50% (cincuenta por ciento) de los Ingresos Netos recibidos por NADBank, que NADBank debe transferir al Fiduciario de conformidad con el inciso (a) de la Sección 3.03 del presente Acuerdo.

“Monto del Fondo de Cobertura Programado” significa una cantidad igual al 10% del total acumulado de los Ingresos Netos distribuidos por NADBank para el Año Fiscal de conformidad con la Sección 3.03(a) del presente Acuerdo, que se calculará el último Día Hábil de cada mes durante dicho Año Fiscal.

“Responsabilidad por Déficit” significa la suma de (i) el Déficit del Fondo de Cobertura agregado no pagado durante el Año Fiscal más (ii) el Intereses por Déficit

plus (ii) the aggregate unpaid Coverage Fund Shortfall Interest during such Fiscal Year.

“Stated Rate” means during any month a daily rate of interest equal to the Secured Overnight Financing Rate reported by the Federal Reserve Bank on the first Business Day of such month.

“TIFIA Lender” means the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau.

“TIFIA Loan” means the loan that may be made by the TIFIA Lender to SANDAG pursuant to the TIFIA Loan Agreement, for the purpose of financing a portion of the SANDAG Construction Project, as described in Exhibit A hereto.

“TIFIA Loan Agreement” means the loan agreement that may be entered into by SANDAG and the TIFIA Lender, providing for a loan to SANDAG payable from and secured by a pledge of SANDAG Net Revenues (in all cases excluding the Net Revenues allocated to SICT hereunder for the benefit of the United Mexican States), for the purpose of financing a portion of the SANDAG Construction Project, as described in Exhibit A hereto, and any amendments or supplements thereto.

“Toll” means the tolls, user fees, rents or other similar charges imposed or collected by SANDAG through the Toll Transaction Location, for entrance to or use of the Toll Road in either direction.

“Toll Governance Agreement” means a future agreement between the Parties that will set forth (i) the governance process of the Binational Working Group, (ii) matters related to Toll setting, Toll collection and approval of the Operations and Maintenance Expenses Budget, and (iii) matters related to traffic congestion and traffic flow management.

del Fondo de Cobertura agregado no pagado durante dicho Año Fiscal.

“Tasa de Interés Establecida” se entenderá, durante cualquier mes, un tipo de interés diario igual a la tasa de financiamiento garantizado a un día (*Secured Overnight Financing Rate*) reportado por el Banco de la Reserva Federal (*Federal Reserve Bank*) en el primer Día Hábil de dicho mes.

“Acreedor TIFIA” significa el Departamento de Transporte de los Estados Unidos de América, una agencia de los Estados Unidos de América, actuando por y a través del Director Ejecutivo del Build America Bureau.

“Crédito TIFIA” significa el crédito que pudiera ser otorgado por el Acreedor TIFIA a SANDAG de conformidad con el Contrato de Crédito TIFIA, con el fin de financiar una parte del Proyecto de Construcción de SANDAG, tal como se describe en el Anexo A del presente documento.

“Contrato de Crédito TIFIA” significa el contrato de crédito que pudiera ser celebrado por SANDAG y el Acreedor TIFIA, que prevé un crédito en favor de SANDAG, pagadero y garantizado por una prenda sobre los Ingresos Netos de SANDAG (excluyendo en todo caso los Ingresos Netos asignado a SICT en el presente para beneficio de los Estados Unidos Mexicanos), con el propósito de financiar una parte del Proyecto de Construcción de SANDAG, tal y como se describe en el Anexo A al presente, así como sus modificaciones y enmiendas.

“Peaje” significa los peajes, tarifas de usuario, derechos u otros cargos similares impuestos o recaudados por SANDAG, a través de la Zona de Cobro de Peaje, para la entrada o el uso de la Autopista de Peaje en cualquier dirección.

“Acuerdo de Gobernanza de Peajes” significa un futuro acuerdo entre las Partes que regulará (i) el proceso de gobernanza del Grupo de Trabajo Binacional (ii) asuntos relacionados con la fijación y cobro de Peajes, y la aprobación del Presupuesto de Gastos de Operación y Mantenimiento, y (iii) asuntos relacionados con la congestión del tráfico y el manejo del flujo de tráfico.

“Toll Reading System” includes: (1) equipment that informs drivers about applicable Toll rates (e.g., variable signs), (2) equipment that reads vehicle toll transponders or other identifiers, validates driver toll account fund sufficiency, regulates vehicle passage (e.g., gates) and/or similar functions, (3) communications equipment that transmits information between and among equipment described in clause (1) and (2), including, in each case, backup or redundant equipment for such purposes; in the understanding that the Toll Reading System does not imply, by itself, a toll charge.

“Toll Revenues” means (a) all revenues collected by SANDAG resulting from its imposition of the Toll for cross-border traffic, as well as the corresponding fines and penalties and interest thereon collected as a result of a failure to pay the Toll, (b) proceeds of insurance payable to or received by SANDAG with respect to the Toll Road (except for proceeds of insurance that are applied or reserved for application to the repair, restoration or replacement of the Toll Road), (c) proceeds of any condemnation awards with respect to the Toll Road (except to the extent applied or reserved for application to the replacement of the Toll Road); but excluding therefrom cash advances representing deposits against future Toll payments from users or potential users of the Toll Road, as reasonably agreed by the Parties, (d) proceeds of damages either awarded to or received by SANDAG that are in consideration for uncollected Toll Revenues and (e) any interest or other investment earnings on amounts on deposit in the Toll Revenues Fund and the Net Revenues Fund held by NADBank.

“Toll Revenues Fund” means the fund by that name described in Section 3.02 hereof.

“Toll Road” means California State Route 11, and any related tolling facilities and tolled or non-tolled connecting or supporting streets, roads, highway lanes or other facilities, as designated by SANDAG, and any

“Sistema de Lectura de Peaje”: incluye: (1) equipos que informan a los conductores sobre las tarifas de Peaje aplicables (por ejemplo, señales variables), (2) equipos que leen transpondedores de Peaje de vehículos u otros identificadores y se comunican con la Zona de Cobro de Peaje para validar la suficiencia de fondos en la cuenta de peaje del conductor, regulan el paso de vehículos (por ejemplo, barreras) y/o funciones similares, (3) equipos de comunicación que transmiten información entre la Zona de Cobro de Peaje y los equipos descritos en los puntos (1) y (2) anteriores, incluyendo, según sea aplicable, equipos de respaldo o redundantes con esos fines; en el entendido que el Sistema de Lectura de Peaje no implica por sí mismo un cobro de Peaje.

“Ingresos por Peaje” significa (a) todos los ingresos recaudados por SANDAG, como resultado del cobro del Peaje para el tráfico transfronterizo, así como las multas y sanciones e intereses correspondientes, recaudados como resultado de la falta de pago de Peaje, (b) ingresos de seguros pagaderos o recibidos por SANDAG con respecto a la Autopista de Peaje (excepto los ingresos de seguros que se destinen o reserven para la reparación, restauración o reemplazo de la Autopista de Peaje), y (c) los ingresos de cualquier expropiación y adjudicaciones con respecto a la Autopista de Peaje (excepto en la medida aplicada o reservada para la aplicación a la compensación de la Autopista de Peaje); pero excluyéndose de los mismos los anticipos de efectivo que representen depósitos contra futuros pagos de Peaje de los usuarios o potenciales usuarios de la Autopista de Peaje, acordados razonablemente por las Partes, (d) el producto de los daños adjudicados ya sea otorgados, o recibidos por SANDAG como contraprestación por los Ingresos de Peaje no recaudados, y (e) cualquier interés u otras ganancias de inversión sobre los montos depositados en la Cuenta de Ingresos por Peaje y en la Cuenta de Ingresos Netos operada por NADBank.

“Cuenta de Ingresos por Peaje” significa la cuenta de dicho nombre descrita en la Sección 3.02 del presente Acuerdo.

“Autopista de Peaje” significa la ruta 11 del Estado de California, y cualquier instalación de Peaje conexa y calles, caminos, carriles de autopista u otras instalaciones de conexión o de apoyo, con Peaje o sin Peaje, según sea designado por SANDAG, y cualquier

expansions, improvements, upgrades, enlargements, or enhancements thereto designated by SANDAG.

“Toll Transaction Location” means the exclusive calculation, administration, processing, accounting, processing, and collection point for Tolls imposed on vehicles traveling in either northbound or southbound directions, under the Project’s traffic congestion management and revenue collection strategy based upon a variable structure, such point to be located within the United States and administered and operated by SANDAG.

“Traffic Consultant” means any traffic and revenue consultant or firm of nationally or internationally recognized traffic and revenue consultants experienced in performing the duties for which a Traffic Consultant is required to be employed pursuant to the provisions of this Agreement selected by the Parties.

“True-Up Fund” means the fund by that name described in Section 3.03(e) hereof.

“Trustee” means the bank, trust company, national banking association or other financial institution serving as trustee under the Indenture, and any successor thereto, in each case having capital stock and surplus aggregating at least \$500,000,000.

(b) Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the 2021 MOU.

ARTICLE II

PRINCIPAL UNDERSTANDINGS

Section 2.01 Principal Understandings. The Parties hereby acknowledge and agree that:

(a) The Project shall be carried out by both Parties with Toll collection functions undertaken solely by SANDAG, through the Toll Transaction Location, with ITS Infrastructure (including the Roadway Toll Collection System) located on both the United States side of the border and the Mexico side of the border.

expansión, mejora, modernización, ampliación o modificación al mismo, designado por SANDAG.

“Zona de Cobro de Peaje” significa el punto exclusivo de cálculo, administración, procesamiento, contabilidad y cobro de los Peajes impuestos a los vehículos que viajan en dirección ya sea hacia el norte o hacia el sur, en el marco de la estrategia de gestión de la congestión del tráfico y recaudación de ingresos del Proyecto basada en nuestra estructura variable, dicho punto debe ubicarse dentro de los Estados Unidos y ser administrado y operado por SANDAG.

“Consultor de Tráfico” significa cualquier consultor o despacho de consultores de tráfico e ingresos, reconocido a nivel nacional o internacional, con la experiencia en tráfico e ingresos requerida para desempeñar la función de Consultor de Tráfico de conformidad con las disposiciones del presente Acuerdo, el cual será seleccionado por las Partes.

“Fondo de Regularización” significa el fondo con ese nombre descrito en la Sección 3.03(e) del presente documento.

“Fiduciario” significa el banco, sociedad fiduciaria, asociación bancaria nacional u otra institución financiera que actúe como fiduciario en virtud del Contrato de Fideicomiso, y cualquier sucesor del mismo, en cada caso con un capital social y un superávit que sumen al menos \$500,000,000.

(b) Los términos en mayúsculas que no se definan de otro modo en el presente Acuerdo tendrán el significado que se les atribuye en el MOU 2021.

ARTÍCULO II

ENTENDIMIENTOS PRINCIPALES

Sección 2.01 Entendimientos Principales. Las Partes reconocen y acuerdan que:

(a) El Proyecto será llevado a cabo por ambas Partes y las funciones de cobro de Peaje serán realizadas únicamente por SANDAG, a través de la Zona de Cobro de Peaje, con Infraestructura ITS (que incluye el Sistema de Cobro de Peaje en Autopista) ubicada tanto en el lado estadounidense de la frontera como en el lado mexicano de la frontera.

(b) In order to finance the Project, and in accordance with applicable law, upon substantial completion of the Construction Project, the Parties desire to have the Toll be a single charge imposed on each vehicle upon entering or using the Toll Road to cross the Otay Mesa East - Mesa de Otay II international border crossing, whether traveling northbound or southbound. It is an express condition of this Agreement that (i) Tolls for the Toll Road be collected exclusively at the Toll Transaction Location using the Roadway Toll Collection System as contemplated hereby, with no other Tolls collected on the Mexico side of the Otay Mesa East - Mesa de Otay II international border crossing and (ii) SICT shall not participate as a borrower, joint obligor, or guarantor, or in any similar capacity, in the financing of the SANDAG Construction Project.

(c) To the extent permitted by applicable law, SANDAG shall serve as the exclusive entity to collect such Toll, for the benefit of the Parties, through the Toll Transaction Location.

(d) SANDAG shall support Toll Revenues collection operations at the Toll Transaction Location, initially through its existing Toll operations center, with Tolls paid through automated payment software and prepaid, pre-registered anonymous electronic account options, using integrated revenue and toll payment equipment to collect Tolls in both directions.

Section 2.02 Confirmation of the 2021 MOU. Except as otherwise provided in this Agreement, the Parties acknowledge and confirm the commitments and understandings provided in the 2021 MOU.

ARTICLE III

TOLL REVENUES; ALLOCATION OF NET REVENUES

Section 3.01 Imposition of Toll; Toll Setting

(a) Upon Commencement of Toll Road Operations, SANDAG shall commence the imposition of the Toll, and collection of Toll Revenues for the benefit of the Parties. SANDAG, through its Board of Directors, shall set the Toll during the term of this

(b) A fin de financiar el Proyecto, y de conformidad con la ley aplicable, una vez finalizado sustancialmente el Proyecto de Construcción, las Partes desean que el Peaje sea un cargo indiviso impuesto a cada vehículo al ingresar o usar la Autopista de Peaje para utilizar el Cruce Fronterizo Internacional Mesa de Otay II – Otay Mesa East, ya sea que se viaje hacia el norte o hacia el sur. Es una condición expresa del presente Acuerdo que: (i) los Peajes de la Autopista de Peaje sean cobrados exclusivamente en la Zona de Cobro de Peaje utilizando el Sistema de Cobro de Peaje en Autopista tal como se contempla en este documento, sin que se cobren ningún Peaje en la sección mexicana del cruce fronterizo internacional Mesa de Otay II – Otay Mesa East y (ii) la SICT no participará como deudor, obligado solidario, mancomunado, fiador, aval, ni de manera alguna en el financiamiento del Proyecto de Construcción de SANDAG.

(c) En la medida permitida por la ley aplicable, SANDAG actuará como la entidad exclusiva para cobrar dicho Peaje en beneficio de las Partes, a través de la Zona de Cobro de Peaje.

(d) SANDAG respaldará las operaciones de recaudación de ingresos de Peaje en la Zona de Cobro de Peaje, inicialmente a través de su centro de operaciones de Peaje existente, con Peajes pagados a través de terminales de pago automatizadas y opciones de cuentas electrónicas anónimas prepagadas y pre-registradas, utilizando ingresos integrados y equipos de pago de Peaje para cobrar los Peajes en ambas direcciones.

Sección 2.02 Confirmación del MOU de 2021. Excepto que se prevea lo contrario en el presente Acuerdo, las Partes reconocen y confirman los compromisos y entendimientos previstos en el MOU 2021.

ARTÍCULO III

INGRESOS POR PEAJE, REPARTO DE INGRESOS NETOS

Sección 3.01 Imposición de Peaje; Fijación de Peaje

(a) Una vez que ocurra el Inicio de Operaciones de la Autopista de Peaje, SANDAG impondrá el Peaje y el cobro de los ingresos por Peaje en beneficio de las Partes. SANDAG, a través de su Consejo de Administración, impondrá el Peaje durante la vigencia

Agreement, in accordance with applicable law and a future Toll Governance Agreement between the Parties. Such Toll setting shall take into account service and performance standards in addition to financial metrics.

(b) SICT and SANDAG shall cooperate to form the Binational Working Group to advise the SANDAG Board of Directors on Toll setting. Upon receiving such advice and recommendations from the Binational Working Group, the SANDAG Board of Directors shall deliberate and take action. The appropriate representative from SICT shall have an advisory position on the SANDAG Board of Directors, in accordance with applicable SANDAG policies, to advise on such Toll setting. Such SICT advisory position shall be in addition to the advisory position currently held by SRE on the SANDAG Board of Directors.

Section 3.02 Collection of Toll Revenues. SANDAG shall collect and account for Toll Revenues on a daily basis. SANDAG shall deposit Toll Revenues into a designated account, segregated from all other funds and accounts held by NADBank, to be known as the “Toll Revenues Fund,” with SANDAG as beneficial owner of the funds therein, to be maintained and administered by NADBank as Custodian pursuant to the Custodial Agreement. Within the Toll Revenues Fund there shall be created the “Restricted Toll Revenues Account” with SANDAG as beneficial owner of the funds therein, to be maintained and administered by NADBank as Custodian pursuant to the Custodial Agreement. If any portion of the Toll Revenues collected by SANDAG consists of Restricted Toll Revenues, SANDAG shall notify the Custodian and direct that such Restricted Toll Revenues be deposited into the Restricted Toll Revenues Account. As shall be provided in the Custodial Agreement, SANDAG shall direct NADBank to disburse, from time to time, first from any amounts available in and eligible to be used from the Restricted Toll Revenues Account until depleted or otherwise ineligible to be expended and thereafter from the remainder of the Toll Revenues Fund, all amounts needed to pay or reimburse SANDAG for Operation and Maintenance Expenses that are consistent with the Operation and Maintenance Budget. As shall be provided in the Custodial Agreement, and no later than five (5)

del presente Acuerdo, de conformidad con la legislación aplicable, y un futuro Acuerdo de Gobernanza de Peaje entre las Partes. Dicha imposición de Peaje tomará en consideración los servicios y estándares de rendimiento además de métricas financieras.

(b) La SICT y SANDAG cooperarán para formar un Grupo de Trabajo Binacional para asesorar al Consejo de Administración de SANDAG sobre la fijación de Peajes. Una vez recibida dicha asesoría y recomendaciones por parte del Grupo de Trabajo Binacional, el Consejo de Administración de SANDAG deliberará y adoptará las medidas correspondientes. El representante apropiado de la SICT continuará formando parte del Consejo de Administración de SANDAG con un rol consultivo de conformidad con las políticas de SANDAG, para asesorar dicha fijación de Peaje. Dicho rol consultivo de la SICT será adicional al cargo de asesor que actualmente ocupa la SRE dentro de la Junta Directiva de SANDAG.

Sección 3.02 Recaudación de Ingresos por Peaje. SANDAG recaudará y contabilizará los Ingresos por Peaje diariamente. SANDAG depositará los Ingresos por Peaje en una cuenta de depósito que se conocerá como la “Cuenta de Ingresos por Peaje”, con SANDAG como propietario beneficiario de los fondos en dicha cuenta, que será mantenida y administrada por el NADBank como Depositario de conformidad con el Contrato de Custodia. Dentro de la Cuenta de Ingresos por Peaje se creará la “Cuenta de Ingresos de Peaje Restringidos” con SANDAG como propietario beneficiario de los fondos del mismo, que será mantenida y administrada por el NADBank como Depositario de conformidad con el Contrato de Depósito. Si alguna parte de los Ingresos por Peaje recaudados por SANDAG consiste en Ingresos de Peaje Restringidos, SANDAG notificará al Depositario y ordenará que dichos Ingresos de Peaje Restringidos se depositen en la Cuenta de Ingresos de Peaje Restringidos. De conformidad con lo que se establecerá en el Contrato de Depósito, SANDAG instruirá a NADBank a desembolsar, de tiempo en tiempo, primero de las cantidades disponibles y elegibles para ser utilizadas de la Cuenta de Ingresos de Peaje Restringidos hasta que se agoten o que no sean elegibles para ser gastadas y, a continuación, del remanente del Fondo de Ingresos de Peaje, todas las cantidades necesarias para pagar o reembolsar a SANDAG los Gastos de Operación y Mantenimiento que se ajusten al

Business Days prior to the last Business Day of each month, (A) NADBank shall transfer all remaining Net Revenues (except for a reasonable portion needed for Operation and Maintenance Expenses provided for in the Operation and Maintenance Budget expected to come due before sufficient additional Toll Revenues are expected to be received to pay such Operation and Maintenance Expenses, as directed by SANDAG, and except for any amounts on deposit in the Restricted Toll Revenues Account) into a designated account, segregated from all other funds and accounts held by NADBank, with SICT (for the benefit of the United Mexican States) and SANDAG as joint beneficial owners of the funds therein, to be known as the “Net Revenues Fund”, to be maintained and administered by NADBank as Custodian pursuant to the Custodial Agreement, and (B) NADBank shall transfer all amounts then on deposit in the Restricted Toll Revenues Account (less amounts retained to pay budgeted Operation and Maintenance Expenses in future months, as directed by SANDAG) to the Trustee to be applied as set forth in the Indenture.

Section 3.03 Allocation of Net Revenues.

(a) Net Revenues will be distributed equitably between SANDAG and SICT, that is, 50% (fifty percent) each in accordance with this Section 3.03, with the understanding that to meet the financial commitments to be undertaken by SANDAG pursuant to the Indenture and the TIFIA Loan Agreement, the distribution of Net Revenues shall be made in the following order:

(i) Firstly, no later than the second to last Business Day of each month, from amounts in the Net Revenues Fund, NADBank shall allocate and transfer (i) 60% (sixty percent) of Net Revenues therein to the Trustee to be applied as set forth in the Indenture and the TIFIA Loan Agreement, and (ii) 40% (forty percent) of Net Revenues therein to SICT for the benefit of the United

Presupuesto de Operación y Mantenimiento. Según se disponga en el Contrato de Depósito, y a más tardar cinco (5) Días Hábiles antes del último Día Hábil de cada mes, (A) el NADBank transferirá todos los Ingresos Netos restantes (excepto una parte razonable necesaria para los Gastos de Operación y Mantenimiento previstos en el Presupuesto de Operación y Mantenimiento que se prevea que vencerán antes de que se prevea que se recibirán Ingresos por Peaje adicionales suficientes para pagar dichos Gastos de Operación y Mantenimiento, de acuerdo a lo ordenado por SANDAG y excepto los importes depositados en la Cuenta de Ingresos de Peaje Restringidos) a una cuenta designada, segregada de todos los demás fondos y cuentas en poder del NADBank, con SICT (en beneficio de los Estados Unidos Mexicanos) y SANDAG como copropietarios beneficiarios de los fondos en la misma, que se conocerá como la “Cuenta de Ingresos Netos”, que será mantenido y administrado por el NADBank en su carácter de Depositario de conformidad con el Contrato de Custodia, y (B) el NADBank transferirá al Fiduciario todas las cantidades que en ese momento se encuentren depositadas en la Cuenta de Ingresos de Peaje Restringidos (menos las cantidades retenidas para pagar los Gastos de Operación y Mantenimiento presupuestados en meses futuros, de acuerdo a lo ordenado por SANDAG), para que sean aplicadas conforme a lo establecido en el Contrato de Fideicomiso.

Sección 3.03 Reparto de Ingresos Netos.

(a) Los Ingresos Netos se distribuirán equitativamente entre SANDAG y la SICT, es decir, 50% (cincuenta por ciento) para cada uno de ellos, de conformidad con esta Sección 3.03; en el entendido que para cumplir con los compromisos financieros que asumirá SANDAG de conformidad con el Contrato de Fideicomiso y el Contrato de Crédito TIFIA, el reparto de los Ingresos Netos se realizará de conformidad con lo siguiente:

(i) En primer lugar: A más tardar el penúltimo Día Hábil de cada mes, de los montos en la Cuenta de Ingresos Netos, NADBank distribuirá y transferirá (i) el 60% (sesenta por ciento) de los Ingresos Netos al Fiduciario para ser aplicados según lo establecido en el Contrato de Fideicomiso y el Contrato de Crédito TIFIA, y (ii) el 40% (cuarenta por ciento) de los Ingresos Netos a SICT para beneficio de los Estados

Mexican States, in each case pursuant to procedures and instructions set forth in the Custodial Agreement.

(ii) Secondly, no later than the last Business Day of each month, SANDAG shall cause the Trustee to deposit Remaining Funds into the Coverage Fund (as described in Section 3.03(d) hereof), to the extent available, up to a maximum of the Scheduled Coverage Fund Amount (exclusive of any accumulated investment earnings on amounts in such Fund). If there are excess Remaining Funds after fully funding the Scheduled Coverage Fund Amount, SANDAG may cause the Trustee to deposit such excess amounts in the True-Up Fund to pay any Cumulative Shortfall Liability or any unpaid Coverage Fund Shortfall Interest. Any remaining revenues after such amounts are paid in full shall be available to be used by the Trustee for other purposes in accordance with the Indenture.

(iii) Thirdly, no later than 15 days after the end of each Fiscal Year, SANDAG shall cause the Trustee to transfer all amounts then on deposit in the Coverage Fund to the True-Up Fund (as described in Section 3.03(e) hereof) to be remitted to SICT for the benefit of the United Mexican States.

(b) If on the last Business Day of any month a Coverage Fund Shortfall exists, such amount shall be a liability of SANDAG, payable to SICT with interest accruing at the Stated Rate. Such interest shall be compounded monthly, until such liability is paid in full from Remaining Funds in accordance with Section 3.03(a)(ii) or Section 3.03(c) hereof.

(c) At the close of the Fiscal Year, the Coverage Fund Shortfall together with the Coverage Fund Shortfall Interest shall be the Shortfall Liability for such Fiscal Year and shall constitute a part of any Cumulative Shortfall Liability. No later than 15 days after the end of any Fiscal Year during which a Cumulative Shortfall Liability exists, SANDAG shall pay, or cause the Trustee to pay, from Remaining Funds

Unidos Mexicanos, en cada caso de conformidad con los procedimientos e instrucciones establecidos en el Contrato de Depósito.

(ii) En segundo lugar: A más tardar el último Día Hábil de cada mes, SANDAG hará que el Fiduciario deposite los Ingresos Remanentes en el Fondo de Cobertura (según se describe en el inciso (d) de la Sección 3.03) en la medida en que estén disponibles, hasta un monto máximo del Monto del Fondo de Cobertura Programado (excluyendo cualquier ganancia de inversión acumulada sobre los montos en dicho Fondo). Si hay Fondos Restantes excedentes después de financiar completamente el Monto del Fondo de Cobertura Programado, SANDAG podrá causar que el Fiduciario deposite dichos montos excedentes en el Fondo de Regularización para pagar cualquier Responsabilidad por Déficit Acumulativo o cualesquiera Intereses por Déficit del Fondo de Cobertura no pagado. Cualquier ingreso restante después de que dichos montos sean pagados en su totalidad estará disponible para ser utilizado por el Fiduciario para otros fines de acuerdo al Contrato de Fideicomiso.

(iii) En tercer lugar: A más tardar el decimoquinto día siguiente al final de cada Año Fiscal, SANDAG hará que el Fiduciario transfiera todas las cantidades que en ese momento se encuentren depositadas en el Fondo de Cobertura al Fondo de Regularización (como se describe en el inciso (e) de la Sección 3.03) para ser remitidas a SICT en beneficio de los Estados Unidos Mexicanos.

(b) Si en el último Día Hábil de cualquier mes existe un Déficit del Fondo de Cobertura, dicho monto será una obligación de SANDAG, pagadera a SICT, con intereses devengados a la Tasa de Interés Establecida. Dichos intereses se capitalizarán mensualmente hasta que dicha obligación se abone en su totalidad desde los Fondos Remanentes de conformidad con la Sección 3.03(c) del presente documento.

(c) Al cierre del Año Fiscal, el Déficit del Fondo de Cobertura junto con los Intereses por Déficit del Fondo de Cobertura, constituirán la Responsabilidad por Déficit correspondiente a dicho Año Fiscal y formarán parte de cualquier Responsabilidad por Déficit Acumulativo. A más tardar 15 días después de la terminación de cualquier Año Fiscal durante el cual exista una Responsabilidad por Déficit Acumulativo,

attributable to such Fiscal Year, an amount up to but not exceeding the Cumulative Shortfall Liability by depositing such amount in the True-Up Fund to be remitted to SICT for the benefit of the United Mexican States. If Remaining Funds are insufficient to allow SANDAG to pay the full amount of the Cumulative Shortfall Liability when due, any remaining unpaid Cumulative Shortfall Liability shall continue to accrue interest at the Stated Rate until paid at any time by SANDAG or by the Trustee at the direction of SANDAG from Remaining Funds attributable to any later Fiscal Year

(d) There shall be created under the Indenture a designated account known as the Coverage Fund, to be held and administered by the Trustee. The Coverage Fund shall be segregated from all other funds and accounts held by the Trustee. The Trustee may make Interim Withdrawals from amounts in the Coverage Fund at any time to make up funding shortfalls under the Indenture or the TIFIA Loan Agreement. The Trustee shall make monthly deposits of Remaining Funds in the Coverage Fund in accordance with Section 3.03(a)(ii) hereof. The Trustee shall invest amounts on deposit in the Coverage Fund in accordance with written instructions from SANDAG. Any investment earnings on amounts deposited in the Coverage Fund shall be deposited in the True-Up Fund and remitted to SICT for the benefit of the United Mexican States monthly on the first Business Day of each month. The original amounts (or “corpus”) deposited in the Coverage Fund shall be considered Remaining Funds and shall be applied as set forth in Section 3.03(a)(iii) hereof.

(e) There shall be created under the Custodial Agreement a designated account known as the True-Up Fund, to be held and administered by NADBank. The True-Up Fund shall be segregated from all other funds and accounts held by NADBank. SICT (for the benefit of the United Mexican States) shall be the beneficial owner of all funds on deposit in the True-Up Fund. SANDAG shall pay, or cause the Trustee to pay, solely from Remaining Funds or any investment earnings thereon, such amounts as are required by Sections

SANDAG pagará, o hará que el Fiduciario pague, de los Ingresos Remanentes atribuibles a dicho Año Fiscal, una cantidad que no exceda la Responsabilidad por Déficit Acumulativo, depositando dicho monto en el Fondo de Regularización para ser remitido a SICT en beneficio de los Estados Unidos Mexicanos. Si los Ingresos Remanentes son insuficientes para permitir que SANDAG pague el monto total de la Responsabilidad por Déficit Acumulativo a su vencimiento, cualquier Responsabilidad por Déficit Acumulativo pendiente de pago continuará devengando intereses a la Tasa de Interés Establecida hasta que sea pagado por SANDAG o el Fiduciario, a petición de SANDAG, con cargo a los Ingresos Remanentes atribuibles a cualquier Año Fiscal posterior.

(d) En virtud del Contrato de Fideicomiso, se creará una cuenta denominada Fondo de Cobertura, que será gestionada y administrada por el Fiduciario. El Fondo de Cobertura estará segregado de todos los demás fondos y cuentas a cargo del Fiduciario. El Fiduciario podrá hacer Retiros Provisionales del Fondo de Cobertura en cualquier momento para compensar déficits de financiación en virtud del Contrato de Fideicomiso o del Contrato de Crédito TIFIA. El Fiduciario realizará depósitos mensuales de los Ingresos Remanentes en el Fondo de Cobertura de conformidad con el inciso (a)(ii) de la Sección 3.03 del presente Acuerdo. El Fiduciario invertirá las cantidades depositadas en el Fondo de Cobertura de conformidad con las instrucciones realizadas por escrito de SANDAG. Cualquier ganancia de inversión sobre los montos depositados en el Fondo de Cobertura se depositará en el Fondo de Compensación y se remitirá a SICT en beneficio de los Estados Unidos Mexicanos de manera mensual en el primer Día Hábil de cada mes]. Las cantidades originales (o “corpus”) depositadas en el Fondo de Cobertura se considerarán Ingresos Remanentes y se aplicarán según lo establecido en el inciso (a)(iii) de la Sección 3.03 del presente Acuerdo.

(e) Se creará bajo el Acuerdo de Custodia una cuenta designada conocida como el Fondo de Regularización, que será mantenida y administrada por el NADBank. El Fondo de Regularización estará separado de todos los demás fondos y cuentas en poder del NADBank. SICT (en beneficio de los Estados Unidos Mexicanos) será el propietario beneficiario de todos los fondos depositados en el Fondo de Regularización. SANDAG pagará, o hará que el Fiduciario pague, únicamente de los Ingresos Remanentes o de cualquier ingreso de

3.03(a)(iii), 3.03(c) and 3.03(d) hereof, to NADBank for deposit into the True-Up Fund, and NADBank shall forthwith remit all amounts in the True-Up Fund to SICT in accordance with the Custodial Agreement.

(f) The Parties shall have no obligation to allocate any revenues generated by or relating to the Project other than Net Revenues and Remaining Funds as described herein.

(g) The Parties hereby acknowledge and agree that the payment obligations of SANDAG under the Indenture and the TIFIA Loan Agreement shall not be payable from or secured by Net Revenues received by SICT for the benefit of the United Mexican States. SANDAG shall not grant any claim to, lien on, or interest in the Net Revenues received by SICT for the benefit of the United Mexican States to the holders of the Bonds, to the TIFIA Lender, or any other party.

(h) Notwithstanding the foregoing, upon satisfaction of all conditions described in Section 3.04, paragraphs (a) through (e) of this Section 3.03 shall be replaced in their entirety with the following (and all remaining paragraphs in Section 3.03 shall be renumbered accordingly):

“(a) No later than the second to last Business Day of each month, from amounts in the Net Revenues Fund, NADBank shall allocate and transfer (i) 50% (fifty percent) of Net Revenues therein to the Trustee to be applied as set forth in the Indenture and the TIFIA Loan Agreement, and (ii) 50% (fifty percent) of Net Revenues therein to SICT for the benefit of the United Mexican States, in each case pursuant to procedures and instructions set forth in the Custodial Agreement.”

Section 3.04 Conditions to Modification of Net Revenues Allocation.

(a) Subject to written approval from the TIFIA Lender, which may not be unreasonably withheld, delayed or denied, the allocation of Net Revenues under the original paragraph (a) through (e) of Section 3.03 hereof shall be modified not earlier than the tenth anniversary of the Effective Date pursuant to paragraph

inversión generado sobre estos, las cantidades requeridas por las Secciones 3.03(a)(iii), 3.03(c) y 3.03(d) del presente Acuerdo, al NADBank para su depósito en el Fondo de Regularización, y el NADBank remitirá inmediatamente todas las cantidades del Fondo de Regularización al SICT de conformidad con el Contrato de Custodia.

(f) Las Partes no tendrán la obligación de distribuir aquellos ingresos generados o relacionados con el Proyecto, distintos de los Ingresos Netos y los Ingresos Remanentes establecidos en el presente Acuerdo.

(g) Las Partes, por medio del presente, reconocen y acuerdan que las obligaciones de pago de SANDAG bajo el Contrato de Fideicomiso y el Contrato de Crédito TIFIA no serán pagaderas ni estarán garantizadas por los Ingresos Netos que recibirá la SICT para beneficio de los Estados Unidos Mexicanos. SANDAG no otorgará derecho, gravamen o interés alguno sobre los Ingresos Netos de SICT para beneficio de los Estados Unidos Mexicanos a los tenedores de los Bonos ni el Acreedor TIFIA, ni cualquier otra parte.

(h) No obstante, lo anterior, una vez satisfechas todas las condiciones descritas en la Sección 3.04, los incisos (a) hasta (e) de esta Sección 3.03 serán reemplazados, en su totalidad, por los siguientes (y todos los párrafos restantes en la Sección 3.03 serán renumerados en consecuencia):

“(a) El último Día Hábil de cada mes, de los montos contenidos en la Cuenta de Ingresos Netos, NADBank distribuirá y transferirá (i) el 50% (cincuenta por ciento) de los Ingresos Netos al Fiduciario para ser aplicados según lo establecido en el Contrato de Fideicomiso y el Contrato de Crédito TIFIA, y (ii) el 50% (cincuenta por ciento) de los Ingresos Netos a SICT para beneficio de los Estados Unidos Mexicanos, en cada caso de conformidad con los procedimientos e instrucciones establecidos en el Contrato de Depósito.”

Sección 3.04 Condiciones para la Modificación del Reparto de Ingresos Netos.

(a) Sujeto a la aprobación por escrito del Acreedor TIFIA, la cual no podrá ser retenida, retrasada o denegada injustificadamente, el reparto de Ingresos Netos conforme a la Sección 3.03 inciso original (a) hasta el (e), deberá ser modificada no antes del décimo aniversario de la Fecha de Entrada en Vigor de

(h) of Section 3.03 hereof on the July 1 immediately following satisfaction of the following conditions:

1. Based on SANDAG's audited financial statements and NADBank Account Statements for the Toll Road, Pro Forma Net Revenues for each of the three immediately preceding Fiscal Years are shown to be not less than 2.0 (two) times Annual Debt Service. Upon satisfaction of the condition described in subparagraph (a)(1) of this Section 3.04, SICT shall have the right to cause SANDAG to engage a Traffic Consultant to determine whether the condition described in subparagraph (a)(3) of this Section 3.04 is satisfied.

2. Based on the current Operation and Maintenance Expenses Budget for the Toll Road, Pro Forma Net Revenues for the current Fiscal Year are projected to be not less than 2.0 (two) times Annual Debt Service.

3. Based on the report of the Traffic Consultant selected pursuant to subparagraph (a)(1) of this Section 3.04, Pro Forma Net Revenues for the current and each succeeding Fiscal Year until the later of the final maturity of the outstanding Bonds or the TIFIA Loan are projected to be not less than 2.0 (two) times Annual Debt Service.

(b) Upon satisfaction of the conditions described in subparagraphs (a)(1), (a)(2) and (a)(3) of Section 3.04 above, SANDAG shall promptly notify the Mexican Representative and NADBank. On the July 1 immediately following such notice, the allocation of Net Revenues hereunder shall be modified in accordance with paragraph (h) of Section 3.03 hereof.

Section 3.05 Termination of Coverage Fund and True-Up Fund Upon modification of the allocation of Net Revenues pursuant to Section 3.04 hereof, each of the Coverage Fund and the True-Up Fund shall be closed and the provisions of Section 3.03(b), (c), (d) and (e) hereof shall terminate and have no further effect.

Section 3.06 Allocation Adjustment. Notwithstanding anything herein to the contrary, the distribution of Net Revenues between SANDAG and SICT pursuant to

conformidad con la Sección 3.03, inciso (h) del presente Acuerdo, el 1 de julio inmediato posterior al cumplimiento de las siguientes condiciones:

1. Con base en los estados financieros auditados de SANDAG y los Estados de Cuenta de NADBank, para la Autopista de Peaje, se demuestra que los Ingresos Netos Pro-Forma para cada uno de los tres Años Fiscales inmediatamente anteriores no son menores a 2.0 veces el Servicio Anual de la Deuda. Una vez satisfecha la condición descrita en esta Sección 3.04, inciso (a), subinciso (1), la SICT tendrá el derecho de solicitar a SANDAG que contrate a un Consultor de Tráfico para determinar si se cumple con la condición descrita en la Sección 3.04, inciso (a), subinciso (3).

2. Con base en el presupuesto anual vigente para la Autopista de Peaje, se prevé que los Ingresos Netos Pro-Forma para Año Fiscal en curso no sean menores a 2.0 (dos) veces el Servicio Anual de la Deuda.

3. Con base en el informe del Consultor de Tráfico seleccionado de conformidad con la Sección 3.04, inciso (a), subinciso (1), los Ingresos Netos Pro-Forma para el Año Fiscal en curso y cada Año Fiscal subsiguiente hasta el vencimiento de los Bonos en circulación o el Crédito TIFIA, lo que ocurra más tarde, se proyectan en no menos de 2.0 (dos) veces el Servicio Anual de la Deuda

(b) Una vez satisfechas las condiciones descritas en la Sección 3.04, inciso (a), subincisos (1), (2) y (3) precedentes, SANDAG notificará de inmediato al Representante mexicano y a NADBank. El 1 de julio inmediato posterior a dicha notificación, el reparto de los Ingresos Netos en virtud del presente se modificará de conformidad con la Sección 3.03, inciso (h) del presente Acuerdo.

Sección 3.05 Terminación del Fondo de Cobertura y del Fondo de Regularización. Una vez modificada la distribución de los Ingresos Netos de conformidad con el apartado 3.04 del presente Acuerdo, el Fondo de Cobertura y el Fondo de Regularización quedarán extinguidos y las disposiciones de los incisos (b), (c), (d) y (e) de la Sección 3.03 quedarán sin efecto.

Sección 3.06 Ajuste de la asignación. No obstante, cualquier disposición en contrario en el presente, la distribución de los Ingresos Netos entre SANDAG y

Section 3.03 hereof shall be subject to adjustment as specified in written directions jointly executed by SANDAG and SICT and delivered to the Custodian (an "Allocation Adjustment Direction"). The Allocation Adjustment Direction shall be prepared and delivered prior to the third to last Business Day of any month in which amounts in the Restricted Toll Revenues Account are transferred to the Trustee pursuant to clause (B) of Section 3.02 hereof (the "Restricted Toll Revenues Transfer"). The Allocation Adjustment Direction shall apply to Net Revenues to be distributed in the month specified therein, and shall provide that on the second to last Business Day of such month, prior to the equitable distribution of Net Revenues specified in Section 3.03 hereof, the Custodian shall distribute Net Revenues between SANDAG and SICT consistent with the percentage allocations specified in Section 3.03(a) hereof.

Section 3.07 Full Transparency; Accountability and Audits.

(a) In accordance with the full transparency guiding principles to which the Parties are bound and committed, SANDAG shall provide SICT permanent access to information concerning (1) the total amount of Toll Revenues that it collects each week; (2) the detailed information concerning the daily volume of traffic on California State Route 11; (3) Operation and Maintenance Expenses; and (4) any other information reasonably requested. All such information shall be provided and deidentified in accordance with applicable law.

(b) SANDAG shall report every six months to SICT, if requested by SICT, information regarding the Toll Revenues and Operation and Maintenance Expenses. In addition, SANDAG shall allow SICT to audit from time to time, at SICT's sole expense, the collection of Toll Revenues and the expenditure of Toll Revenues to pay Operation and Maintenance Expenses and other operations relating to the Project, as reasonably requested.

Section 3.08 Flow of Funds Illustrations. A visual illustration of the initial flow of funds under this Article III, prior to modification under Section 3.04, is attached as Exhibit C. A visual illustration of the flow

SICT de conformidad con la Sección 3.03 del presente estará sujeta a ajustes según se especifique en instrucciones escritas suscritas conjuntamente por SANDAG y SICT y entregadas al Depositario (una "Instrucción de Ajuste de Asignación"). La Instrucción de Ajuste de Asignación deberá de ser preparada y entregada antes del tercer último Día Hábil de cualquier mes en el que los importes de la Cuenta de Ingresos de Peaje Restringidos se transfieran al Depositario de conformidad con el inciso (B) de la Sección 3.02 del presente. La Instrucción de Ajuste de Asignación se aplicará a los Ingresos Netos que se vayan a distribuir en el mes especificado en la misma, y dispondrá que el penúltimo Día Hábil de dicho mes, antes de la distribución equitativa de los Ingresos Netos especificada en la Sección 3.03 del presente documento, el Depositario distribuirá los Ingresos Netos entre SANDAG y SICT de conformidad con las asignaciones porcentuales especificadas en la Sección 3.03 (a) del presente.

Sección 3.07 Transparencia, Rendición de Cuentas y Auditorías.

(a) De conformidad con los principios rectores de plena transparencia a los que las Partes están obligadas y comprometidas, SANDAG proporcionará a la SICT acceso permanente a la información sobre (1) el monto total de los Ingresos por Peajes recaudados cada semana; (2) la información detallada sobre el volumen diario de tráfico en la Ruta 11 del Estado de California; (3) los Gastos de Operación y Mantenimiento, y (4) cualquier otra información razonablemente requerida. Dicha información se proporcionará disociada de conformidad con la legislación aplicable.

(b) SANDAG reportará semestralmente a la SICT, si así lo solicita la SICT, información relacionada con los Ingresos por Peajes y los Gastos de Operación y Mantenimiento. Asimismo, SANDAG permitirá que la SICT realice auditorías, periódicamente, a expensas de la SICT, en relación con el cobro de los Ingresos por Peajes y el gasto de los Ingresos por Peajes para cubrir los Gastos de Operación y Mantenimiento y otras operaciones relacionadas con el Proyecto, conforme se solicite razonablemente.

Sección 3.08 Ilustración del Flujo de Fondos. Una ilustración visual del flujo inicial de fondos bajo el presente Artículo III, previo a modificación conforme a la Sección 3.04, se adjunta como Anexo C. Una

of Restricted Toll Revenues through NADBank is attached as Exhibit D. Such exhibits are solely for illustrative purposes and shall not be construed to modify any provision of this Agreement or any other agreement between the Parties.

ARTICLE IV

DISPUTE RESOLUTION

Section 4.01 Scope.

(a) The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of a matter that might affect its operation or application.

(b) The dispute settlement provisions of this Article IV shall apply (i) with respect to the avoidance or settlement of disputes between the Parties regarding the interpretation or application of this Agreement or (ii) when either of the Parties considers that an actual or proposed action of the other Party would be inconsistent with an obligation of this Agreement or that an actual or proposed inaction of the other Party would constitute failure to carry out an obligation of this Agreement.

Section 4.02 Consultations.

(a) The Parties may request consultations with respect to any matter described in paragraph (b) Section 4.01 above. Such request shall be in writing, and shall set out the reasons for the request, including identification of the specific action, inaction or other matter at issue and an indication of the legal basis for the complaint. Unless the Parties decide otherwise, they shall enter into consultations no later than fifteen (15) Business Days after the date of delivery of the request therefor.

(b) The Parties shall make every attempt to arrive at a mutually satisfactory resolution of a matter through consultations under this Section 4.02. To this end: (i) the Party requesting consultations shall provide sufficient information to enable a full examination of how the actual or proposed action, inaction or other

ilustración visual del flujo de Ingresos de Peaje Restringidos a través de NADBank está adjunta como Anexo D. Dichos anexos son únicamente para fines ilustrativos y no deben interpretarse para modificar ninguna disposición de este Acuerdo o cualquier otro acuerdo entre las Partes.

ARTÍCULO IV

SOLUCIÓN DE CONTROVERSIAS

Sección 4.01 Alcance.

(a) Las Partes procurarán, en todo momento, alcanzar un acuerdo sobre la interpretación y aplicación del presente Acuerdo, y harán todo lo posible para alcanzar una solución mutuamente satisfactoria sobre cualquier asunto que pueda afectar su funcionamiento o aplicación, a través de la cooperación y las consultas

(b) Las disposiciones sobre solución de controversias previstas en el presente Artículo IV se aplicarán (i) en relación con la prevención o solución de controversias entre las Partes respecto de la interpretación o aplicación del presente Acuerdo; o (ii) cuando alguna de las Partes considere que una acción real o propuesta por la otra Parte sea incompatible con una obligación prevista en el presente Acuerdo o que una omisión real o propuesta por la otra Parte pueda constituir un incumplimiento de las obligaciones previstas en el presente Acuerdo

Sección 4.02 Consultas.

(a) Las Partes podrán solicitar consultas respecto de cualquier asunto descrito en la Sección 4.01, inciso (b) precedente. Dicha solicitud se hará por escrito y establecerá los motivos de la consulta, incluyendo la identificación de la acción específica, la inacción o cualquier otro asunto, así como el fundamento legal de la controversia. Salvo decisión en contrario de las Partes, se celebrarán las consultas a más tardar quince (15) Días Hábiles posteriores a la fecha de entrega de la solicitud correspondiente.

(b) Las Partes harán todo lo posible por alcanzar una solución mutuamente satisfactoria mediante las consultas de conformidad con la Sección 4.02. En este sentido: (i) la Parte que solicite las consultas proporcionará información suficiente para permitir un examen completo de cómo la acción, omisión u otro

matter at issue might affect the operation of application of this Agreement; (ii) all participants in such consultations shall treat the information exchanged in the course of consultations that is designated as confidential on the same basis as the Party providing the information; and (iii) the Parties shall seek to avoid a resolution that adversely affects the interests of the other under this Agreement.

Section 4.03 Alternative Dispute Resolution. The Parties may initiate at any time to voluntarily undertake an alternative method of dispute resolution, such as good offices, conciliation or mediation. Proceedings that involve good offices, conciliation or mediation shall be confidential and without prejudice to the rights of the Parties in another proceeding. SICT and SANDAG proceeding under this Section 4.03 may suspend or terminate those proceedings. If the Parties so decide, good offices, conciliation or mediation may continue while a dispute proceeds for resolution before a panel established under Section 4.04.

Section 4.04 Establishment of Panel.

(a) If the Parties fail to resolve the matter within thirty (30) Business Days after the date of delivery of the request for consultations described in paragraph (a) of Section 4.02 hereof, or such other period as the Parties may decide, then either Party may request the establishment of a panel by means of a written notice delivered to the other, and shall include in such request an identification of the measure or other matter at issue and a brief summary of the legal basis of the complaint sufficient to present the issue clearly. Upon delivery of such request, a panel shall be established to be composed of the panelists described in paragraph (b) of Section 4.04 below.

(b) The panel shall comprise three members. One panelist shall be selected by SICT, one panelist shall be selected by SANDAG, and one panelist shall be selected by NADBank pursuant to the Custodial Agreement. Each panelist shall be selected on the basis of objectivity, reliability, and sound judgment. The panelist selected by NADBank shall chair the panel.

asunto en cuestión, real o propuesto, podría afectar la aplicación del presente Acuerdo; (ii) todos los participantes en las consultas tratarán la información intercambiada durante el curso de las consultas, que se designe como confidencial sobre la misma base que la Parte que proporcione dicha información; y (iii) las Partes buscarán evitar una solución que afecte negativamente los intereses de la otra Parte conforme al presente Acuerdo.

Sección 4.03 Solución Alternativa de Controversias. Las Partes podrán iniciar en cualquier momento, de manera voluntaria, un método alternativo de solución de controversias, como los buenos oficios, la conciliación o la mediación. Los procedimientos que involucren buenos oficios, conciliación o mediación serán confidenciales y sin perjuicio de los derechos de las Partes en otro procedimiento. De conformidad con esta Sección 4.03, las Partes pueden suspender o dar por terminados dichos procedimientos. Si las Partes así lo deciden, los buenos oficios, la conciliación o la mediación pueden continuar mientras una controversia se encuentre en proceso de solución ante un panel conformado en los términos de la Sección 4.04.

Sección 4.04 Establecimiento del Panel.

(a) Si las Partes no resuelven el asunto dentro de los treinta (30) Días Hábiles siguientes a la fecha de entrega de la solicitud de consultas descrita en la Sección 4.02, inciso (a) precedente, o dentro de cualquier otro plazo que las Partes decidan, entonces cualquiera de las Partes podrá solicitar el establecimiento de un panel, mediante notificación escrita entregada a la otra Parte, e incluirá en dicha solicitud una identificación de la medida u otro asunto en cuestión, así como un breve resumen de los fundamentos jurídicos de la controversia, que se consideren suficientes para presentar el problema con claridad. Tras la entrega de dicha solicitud, se establecerá un panel compuesto por los panelistas descritos en la Sección 4.04, inciso (b) a continuación.

(b) El panel estará integrado por tres miembros. Un panelista será seleccionado por la SICT, un panelista será seleccionado por SANDAG y un panelista será seleccionado por NADBank de conformidad con el Contrato de Depósito. Cada panelista será seleccionado sobre la base de su objetividad, confiabilidad y buen

(c) If a panelist resigns, is removed, or becomes unable to serve, the time frames applicable to the panel's proceedings shall be suspended until a replacement is appointed and shall be extended by the amount of time that the work was suspended. Such appointment shall be made within the following fifteen (15) Business Days in accordance with the method used to select such panelist pursuant to paragraph (b) of Section 4.04 hereof.

Section 4.05 Panel Proceedings; Panel Report.

(a) The Parties shall have the right to at least one hearing before the panel at which each Party may present views orally, and each may provide an initial and a rebuttal written submission. The panel shall protect the confidentiality of information designated as confidential. Written submissions and oral arguments shall be made in one of the languages of the Parties unless the Parties decide otherwise.

(b) The panel's function shall be to make an objective assessment of the matter before it and to present a report that contains (i) findings of fact, (ii) determinations as to whether the action, inaction or other matter at issue is inconsistent with the obligations in this Agreement or whether either Party has otherwise failed to carry out its obligations in this Agreement, (iii) recommendations for the resolution of the dispute and (iv) the reasons for the findings and determinations.

(c) The panel shall interpret this Agreement in accordance with customary rules of interpretation of public international law. Panel determination shall be unanimous, except that if the panel is unable to reach consensus, it may take its decision by majority vote.

(d) The panel shall present an initial report no later than sixty (60) Business Days after the date of the appointment of the last panelist. The Parties may submit written comment to the panel on its initial report no later than fifteen (15) Business Days after the presentation of the initial report or within another period as the Parties may decide. After considering such comments, the panel, on its own initiative or at the

juicio. El panelista designado por NADBank presidirá el panel.

(c) Si un panelista renuncia, es destituido o está imposibilitado de prestar sus servicios, los plazos aplicables a los procedimientos se suspenderán hasta que se nombre un reemplazo y se prorrogarán por el tiempo que estuvo suspendido el procedimiento. Dicho nombramiento deberá hacerse en los quince (15) Días Hábiles siguientes, con el método usado para seleccionar dicho panelista de conformidad con la Sección 4.04, inciso (b) del presente Acuerdo.

Sección 4.05 Procedimientos del Panel, Informe del Panel.

(a) Las Partes tendrán el derecho de al menos una audiencia ante el panel en donde las Partes podrán presentar sus puntos de vista de forma verbal, y cada una podrá presentar un escrito inicial y una réplica. El panel protegerá la confidencialidad de la información clasificada como confidencial. Los escritos y los argumentos orales se realizarán en uno de los idiomas de las Partes, salvo decisión en contrario de las Partes.

(b) La función del panel es evaluar objetivamente el asunto en cuestión y presentar un informe que contenga (i) determinaciones de hecho, (ii) determinaciones sobre si la acción, omisión u otro asunto relevante es inconsistente con las obligaciones previstas en el presente Acuerdo o si las Partes han incumplido de alguna manera sus obligaciones de conformidad con el presente Acuerdo, (iii) recomendaciones para la solución de la controversia y (iv) las razones de los hallazgos y determinaciones.

(c) El panel interpretará el presente Acuerdo de conformidad con las reglas consuetudinarias de interpretación de derecho internacional público. Las determinaciones del panel deberán ser unánimes, salvo cuando no se pueda llegar a un consenso, la decisión se tomará por mayoría de votos.

(d) El panel presentará un informe inicial a más tardar sesenta (60) Días Hábiles posteriores a la fecha de designación del último panelista. Las Partes podrán presentar comentarios por escrito al panel sobre su informe inicial a más tardar quince (15) Días Hábiles después de la presentación del informe inicial o dentro de otro plazo que las Partes decidan. Después de considerar dichos comentarios, el panel, por iniciativa

request of either Party, may (i) request the views of the other Party, (ii) reconsider its report or (iii) make such further examination as it considers appropriate. The panel shall present a final report no later than thirty (30) Business Days after presentation of the initial report, unless the Parties decide otherwise.

(e) Within thirty (30) Business Days from receipt of a final report that contains findings that (i) the action, inaction or other measure at issue is inconsistent with the obligations of either Party in this Agreement, or (ii) either Party has otherwise failed to carry out its obligations in this Agreement, the Parties shall endeavor to agree on the resolution of the dispute.

ARTICLE V

GENERAL PROVISIONS

Section 5.01 Effective Date. The Original Agreement became effective on January 1, 2023. This Agreement shall become effective on the date it is duly executed by both Parties and each of the Parties receives an original counterpart, duly executed. This Agreement shall supersede the Original Agreement in its entirety.

Section 5.02 Term. The term of this Agreement shall commence on the Effective Date and terminate in the event the later of the following occurs (i) the date that is forty (40) years after the Effective Date or (ii) the date that all obligations of SANDAG under the Indenture, the TIFIA Loan Agreement and this Agreement have been satisfied and paid in full, including (A) the obligation to cause NADBank to allocate Net Revenues to SICT for the benefit of the United Mexican States, pursuant to paragraph (a) of Section 3.03 hereof, (B) the obligation to pay any Shortfall Amount and interest accrued thereon from Remaining Funds pursuant to paragraph (b) of Section 3.03 hereof, (C) the obligation to pay interest earned on amounts deposited in the Coverage Fund pursuant to paragraph (a) of Section 3.05 hereof and (D) the obligation to pay any Interim Liability from Remaining Funds pursuant to paragraph (b) of Section 3.05 hereof; with the understanding that the parties may mutually agree to the renewal of this Agreement.

propia o a solicitud de alguna de las Partes, podrá (i) solicitar las opiniones de la otra Parte, (ii) reconsiderar su informe o (iii) realizar una investigación más a profundidad, según lo considere pertinente. El panel presentará un informe final a más tardar treinta (30) Días Hábiles después de la presentación del informe inicial, a menos que las Partes decidan lo contrario.

(e) Dentro de los treinta (30) Días Hábiles siguientes a la recepción del informe final que contenga la determinación sobre (i) la acción, omisión u otra medida incompatible con las obligaciones de las Partes de conformidad con el presente Acuerdo, o (ii) alguna de las Partes ha incumplido con sus obligaciones previstas en el presente Acuerdo, las Partes se esforzarán por alcanzar un acuerdo sobre la solución de la controversia.

ARTÍCULO V

DISPOSICIONES GENERALES

Sección 5.01 Entrada en Vigor. El Acuerdo Original entró en vigor el 1 de enero de 2023. El presente Acuerdo entrará en vigor en la fecha en que sea debidamente firmado por ambas Partes y cada una de las Partes reciba un ejemplar original debidamente firmado. El presente Acuerdo reemplazará en su totalidad el Acuerdo Original.

Sección 5.02 Vigencia. La vigencia del presente Acuerdo comenzará en la Fecha de Entrada en Vigor y terminará en el supuesto que se actualice el último de los siguientes (i) cuando transcurran 40 (cuarenta) años después de la Fecha de Entrada en Vigor o (ii) la fecha en que todas las obligaciones de SANDAG previstas en el Contrato de Fideicomiso, en el Contrato de Crédito TIFIA y en el presente Acuerdo hayan sido satisfechas y pagadas en su totalidad así como (A) las obligaciones de NADBank de asignar los Ingresos Netos a la SICT para beneficio de los Estados Unidos Mexicanos, de conformidad con la Sección 3.03, inciso (a) del presente Acuerdo, (B) la obligación de pagar cualquier Monto del Déficit e ingresos generados de los Ingresos Restantes de conformidad con la Sección 3.03, inciso (b) del presente Acuerdo, (C) la obligación de pagar los intereses devengados por las cantidades depositadas en el Fondo de Cobertura de conformidad con el inciso (a) de la Sección 3.05 y (D) la obligación de pagar cualquier Responsabilidad por Déficit con cargo a los Ingresos Remanentes de conformidad con el inciso (b)

Section 5.03 Further Assurances.

(a) In order to assist SANDAG with satisfying its obligations under the Indenture, the TIFIA Loan Agreement or federal securities laws of the United States of America, the Mexican Representative (and/or the duly authorized officers of SICT, in accordance with the provisions of paragraph (b) of Section 1.03 hereof) will make its best efforts to provide any information, execute and deliver any documents or take any other actions reasonably requested by SANDAG. Moreover, in order to assist SICT with satisfying its credit, transparency, or any other obligations required under the field of information, the SANDAG Representative, in accordance with the provisions of paragraph (c) of Section 1.03 hereof, will make its best efforts to provide any information, execute and deliver any documents or take any other action reasonably requested by SICT.

(b) In connection with the foregoing, SICT shall deliver to SANDAG, promptly after the Effective Date of this Agreement a legal opinion at SANDAG's expense, of outside counsel to SICT selected by SICT addressing the enforceability of this Agreement against SICT, in form and substance reasonably satisfactory to SANDAG.

Likewise, SANDAG shall deliver to SICT, promptly after the Effective Date of this Agreement, a legal opinion at SANDAG's expense, of outside counsel to SANDAG selected by SANDAG addressing the enforceability of this Agreement against SANDAG, in form and substance reasonably satisfactory to SICT

(c) Under no reason or circumstance shall SICT be liable with respect to any payment obligations of SANDAG under the TIFIA Loan Agreement, the Indenture and/or the Bonds. SANDAG undertakes to keep SICT, including the Mexican Representative (and/or the duly authorized officers of each of the

de la Sección 3.05 del presente Acuerdo; en el entendido que las partes de común acuerdo podrán renovar la vigencia del presente Acuerdo.

Sección 5.03. Garantías Adicionales.

(a) Con el fin de ayudar a SANDAG a cumplir con sus obligaciones bajo el Contrato de Fideicomiso, el Contrato de Crédito TIFIA o las leyes federales de valores de los Estados Unidos de América, el Representante Mexicano (y/o los funcionarios debidamente autorizados de la SICT, de conformidad con lo previsto en la Sección 1.03, inciso (b) del presente Acuerdo) hará sus mejores esfuerzos para proporcionar cualquier información, firmará y entregará cualquier documento o realizará las acciones razonablemente solicitadas por SANDAG. Asimismo, con el fin de ayudar a la SICT a cumplir con sus obligaciones crediticias, de transparencia o cualquier otra que se le requiera en el ámbito de información, el Representante SANDAG, de conformidad con lo previsto en la Sección 1.03, inciso (c) del presente Acuerdo, hará sus mejores esfuerzos para proporcionar cualquier información, firmará y entregará cualquier documento o realizará las acciones razonablemente solicitadas por la SICT.

(b) En virtud de lo anterior, SICT entregará a SANDAG, inmediatamente después de la Fecha de Entrada en Vigor del presente Acuerdo, una opinión legal, con cargo y a costo de SANDAG, de un asesor legal externo de SICT y seleccionado por SICT respecto la oponibilidad de este Acuerdo contra SICT, en forma y sustancia razonablemente satisfactoria para SANDAG.

Asimismo, SANDAG entregará a la SICT inmediatamente después de la Fecha de Entrada en Vigor del presente Acuerdo, una opinión legal, con cargo y a costo de SANDAG, de un asesor legal externo de SANDAG y seleccionado por SANDAG respecto la oponibilidad de este Acuerdo contra SANDAG, en forma y sustancia razonablemente satisfactoria para la SICT.

(c) Bajo ninguna circunstancia o motivo, la SICT será responsable de ninguna de las obligaciones de pago que asuma SANDAG al amparo del Contrato de Crédito TIFIA, el Contrato de Fideicomiso y/o de los Bonos. Asimismo, SANDAG se obliga a liberar a la SICT, incluyendo al Representante Mexicano (y/o los

Mexican parties to the 2021 MOU) (collectively, the “Indemnified Parties”) free from any claim, lawsuit, complaint, proceeding, investigation, or action in connection with the TIFIA Loan Agreement, the Indenture and/or the Bonds to the extent caused by or arising from any acts or omissions of SANDAG; provided, however, that SANDAG shall not be required to hold harmless and indemnify any of the Indemnified Parties for any such claim, lawsuit, complaint, proceeding, investigation or action, but only if it is determined by a court with jurisdiction over the matter to have been caused by or arising from the negligence, recklessness, breach of contract, or willful misconduct of such Indemnified Party.

Section 5.04 Lawfully Binding Agreement. This Agreement is legally binding on the Parties. Each Party hereby accepts and recognizes its obligations and rights hereunder, being legally enforceable at law or in equity.

Section 5.05 No Liability. Neither Party shall be liable for the acts or omissions of the other Party.

Section 5.06 Waivers. No waiver of any provision of this Agreement requested by either Party shall be valid without the prior written consent of the other Party.

Section 5.07 Amendment. No amendment or modification of any provision of this Agreement shall be valid without the written agreement of both Parties.

Section 5.08 No Assignment. Neither Party may assign any of the rights, obligations, or other provisions of this Agreement.

Section 5.09 Applicable Law. This Agreement shall be interpreted consistent with all applicable laws, and actions taken hereunder shall be subject to, and shall be performed in accordance with, all applicable laws. The obligations of SANDAG under this Agreement shall be governed by the laws of the State of California, and the obligations of SICT under this Agreement shall be governed by the laws of the United Mexican States.

Section 5.10 Execution in Counterparts. This Agreement will be executed in two (2) original counterparts, each one in both English and Spanish,

funcionarios debidamente autorizados de las partes mexicanas en el MOU 2021) (referidas colectivamente como “Partes Indemnizadas”), de cualquier reclamo, demanda, denuncia, proceso, investigación, o acción de cualquier naturaleza realizada en relación con el Contrato de Crédito TIFIA, el Contrato de Fideicomiso y/o de los Bonos y SANDAG; en el entendido, sin embargo, que SANDAG no estará obligada a liberar de responsabilidad e indemnizar a ninguna de las Partes Indemnizadas por algún reclamo, demanda, queja, procedimiento, investigación o acción, en la medida que un tribunal con jurisdicción sobre el asunto determine de manera definitiva que haya sido causada por negligencia, imprudencia, incumplimiento de contrato o mala fe de las Partes Indemnizadas.

Sección 5.04. Acuerdo Jurídicamente Vinculante. El presente Acuerdo es jurídicamente vinculante para las Partes. Cada Parte acepta y reconoce sus obligaciones y derechos en virtud del mismo, siendo jurídicamente exigible en derecho o equidad.

Sección 5.05 Responsabilidad. Una Parte no será responsable por los actos u omisiones de la otra Parte.

Sección 5.06 Renuncias. Ninguna renuncia a cualquier disposición del presente Acuerdo que sea solicitada por cualquier Parte será válida sin el consentimiento previo y por escrito de la otra Parte.

Sección 5.07 Modificaciones. Ninguna modificación de cualquier disposición del presente Acuerdo será válida sin el acuerdo por escrito de ambas Partes.

Sección 5.08 Cesión. Ninguna de las Partes podrá ceder los derechos, obligaciones u otras disposiciones previstas en el presente Acuerdo.

Sección 5.09 Ley Aplicable. El presente Acuerdo se interpretará de conformidad con todas las leyes aplicables, y las acciones que se adopten en virtud del mismo estarán sujetas y se ejecutarán de conformidad con todas las leyes aplicables. Las obligaciones de SANDAG conforme al presente Acuerdo se regirán por las leyes del Estado de California, y las obligaciones de la SICT conforme al presente Acuerdo, se regirán por las leyes de los Estados Unidos Mexicanos.

Sección 5.10 Ejemplares. Este Acuerdo se suscribirá en dos (2) ejemplares originales, cada uno en los idiomas español e inglés, siendo ambos textos igualmente

which both shall be deemed authentic and all of which taken together shall constitute one and the same instrument.

auténticos, y todos en conjunto constituirán un único y mismo instrumento.

[SIGNATURE SHEET FOLLOWS / CONTINUA HOJA DE FIRMAS]

DRAFT

SECRETARÍA DE INFRAESTRUCTURA, COMUNICACIONES Y TRANSPORTES DE LOS ESTADOS UNIDOS MEXICANOS

By / Por: _____
Name / Nombre: Jorge Nuño Lara
Title / Cargo: Minister / Ministro
Date Signed / Fecha de Firma: _____

SAN DIEGO ASSOCIATION OF GOVERNMENTS

By / Por: _____
Name / Nombre: _____
Title / Cargo: Chief Executive Officer / Presidente Ejecutivo
Date Signed / Fecha de Firma: _____

Witnessed by the [Chair] [Vice-Chair] of the / Con la comparecencia del [Presidente] [Vicepresidente] de:
SAN DIEGO ASSOCIATION OF GOVERNMENTS

By / Por: _____
Name / Nombre: _____
Title / Cargo: [Chair / Presidente] [Vice-Chair / Vicepresidente]
Date Signed / Fecha de Firma: _____

Witnessed by the / Con la comparecencia de:
STATE OF CALIFORNIA

By / Por: _____
Name / Nombre: _____
Title: _____
Date Signed: _____

Witnessed by the / Con la comparecencia de:
NORTH AMERICAN DEVELOPMENT BANK

By: _____
Name: _____
Title: Managing Director / Director General
Date Signed: _____

[PAGE RESERVED FOR ADDITIONAL WITNESS SIGNATURES / PÁGINA RESERVADA PARA FIRMAS DE
TESTIGOS ADICIONALES]

DRAFT

EXHIBIT A / ANEXO A



Exhibit A/Anexo A

Terms/Términos*

The numbered paragraphs (below) correspond to the numbers on the map. The map is for illustrative purposes only.

1. State Route 11 Toll Road. Construction is complete. Will not be financed with the Bonds or TIFIA loan.

California State Route 11 (also known as SR-11) is approximately 2.5 miles and includes connectors to California State Routes 905 and 125. SR-11 connects to the future Otay Mesa East Port of Entry site.

2. Otay Mesa East Port of Entry. Design in progress. Site preparation and utility development is under construction but construction of the Port of Entry buildings and supporting facilities has not commenced. The Port of Entry buildings and supporting facilities will be financed with the TIFIA Loan, Bonds, and/or grants.

The TIFIA Loan and Bonds will finance design and construction of a United States Port of Entry facility to provide controlled entry to and departure from the United States for passenger and commercial vehicles, in accordance with the requirements of United States Customs and Border Protection and other United States federal agencies responsible for the enforcement of federal laws pertaining to such activities. There are anticipated to be 12 inbound lanes and six outbound lanes upon Commencement of Operations.

3. U.S. ITS Infrastructure. Design in progress. Construction has not yet commenced. Will be financed with the TIFIA Loan, Bonds, and/or grants.

Includes roadway Toll technology infrastructure and related systems (e.g., fiber and wireless communications systems, vehicle detection equipment, messaging signs, and related equipment), and related software systems (e.g., Regional Border Management System and software upgrades to regional tolling back-

Los párrafos enumerados (abajo) corresponden a los números en el mapa. El mapa es solo para fines ilustrativos.

1. Ruta Estatal de Peaje 11. La construcción ha sido completada. No se financiará con los Bonos ni con el Crédito TIFIA.

La Ruta 11 del Estado de California (también conocida como SR11) de aproximadamente 2.5 millas, incluye conexiones a las rutas 905 y 125 del Estado de California. La SR11 se conecta con el sitio en donde se ubicará el Puerto de Entrada de Otay Mesa East.

2. Puerto de Entrada Otay Mesa East. Diseño en proceso. La preparación del sitio y la instalación de servicios públicos se encuentran en proceso de construcción; la construcción de los inmuebles del Puerto de Entrada e instalaciones auxiliares no ha comenzado. Los inmuebles del Puerto de Entrada y las instalaciones auxiliares se financiarán con el Crédito TIFIA, Bonos y/o subvenciones.

El Crédito y Bonos TIFIA financiarán el diseño y construcción de una instalación en el Puerto de Entrada de los Estados Unidos de América, que permita la entrada y salida controlada de los Estados Unidos de América de vehículos comerciales y de pasajeros de conformidad con los requisitos emitidos por la Oficina de Aduanas y Protección Fronteriza de los Estados Unidos (*United States Customs and Border Protection*) y por cualesquiera otras dependencias federales responsables de hacer cumplir las leyes relacionadas con dichas actividades. Se prevé que habrá 10 carriles de entrada y seis carriles de salida al comienzo de las operaciones.

3. Infraestructura ITS de EUA. Diseño en proceso. La construcción aún no ha comenzado. Se financiará con el Crédito TIFIA, Bonos y/o subvenciones.

Incluye, infraestructura de tecnología vial de peaje y sistemas relacionados (por ejemplo: sistemas de comunicaciones inalámbricos y de fibra, equipo de detección de vehículos, señales de anuncios y equipo relacionado) y sistemas de software relacionados (por ejemplo: Sistema de Manejo Regional de Fronteras y

office system to support imposition of the Toll), including the components of the Toll Reading System that are to be located on the United States side.

4. California Highway Patrol Commercial Vehicle Enforcement Facility. Design in progress. Construction has not commenced. Will be financed with the TIFIA Loan, Bonds, and/or grants.

The California Highway Patrol Commercial Vehicle Enforcement Facility (commonly called a weigh station) will be designed and constructed to meet the applicable California and United States agencies' requirements to process and inspect commercial vehicles for travel on United States federal highways and California state and local roads.

5. Mesa de Otay II Port of Entry. The design of the Mesa de Otay II Port of Entry is complete (see Exhibit B, below) and construction has commenced. It is designed over a surface of 31 hectares, allowing the accommodation of the different agencies involved, along with export and import zones. This design was coordinated with the United States-counterpart for its homologation to comply with the binational requirements and the collection logistics on the United States side. The Ministry of National Defense (*Secretaría de la Defensa Nacional*) (SEDENA) will construct the Mesa de Otay II Port of Entry with public resources.

6. Mexico ITS Infrastructure. Design in progress. The completion of the design portion of the Intelligent Transportation System is coordinated among the National Customs Agency of Mexico (ANAM), Mexico's Ministry of National Defense (SEDENA), and SICT. The terms of reference for its contracting must incorporate elements that provide information to the user, feedback to the United States-side on traffic lanes that will be interchangeable, waiting times, toll payment, etc., includes , roadway Toll technology infrastructure and related systems (e.g., fiber and wireless communication systems, vehicle detection equipment, messaging signs and related equipment), including the components of the Toll Reading System

actualizaciones de software al sistema administrativo de peaje regional para respaldar la imposición del peaje, incluyendo los componentes del Sistema de Lectura de Peaje que se ubicarán en la sección de los Estados Unidos.

4. Centro de Control de Vehículos Comerciales de la Patrulla de Carreteras del Estado de California. Diseño en proceso. La construcción no ha comenzado. Se financiará con el Crédito TIFIA, Bonos y/o subvenciones.

El Centro de Control de Vehículos Comerciales de la Patrulla de Carreteras del Estado de California (comúnmente llamado estación de pesaje) se diseñará y construirá para cumplir con los requisitos aplicables emitidos por las dependencias del Estado de California y de los Estados Unidos de América en relación con el proceso de inspección de vehículos comerciales que viajen en las Carreteras Federales de los Estados Unidos de América y en las carreteras estatales y locales del Estado de California.

5. Puerto de Entrada Mesa de Otay II. El diseño del Puerto de Entrada Mesa de Otay II ha sido completado (se adjunta al presente como Anexo B, abajo). Este se diseñó sobre una superficie de 31 Ha, permitiendo el alojamiento de las diferentes dependencias involucradas y zonas de exportación e importación. Este diseño fue coordinado con la contraparte americana para su homologación para cumplir con los requerimientos binacionales y con la logística de cobro en el lado americano. La Secretaría de la Defensa Nacional, realizará la obra con recursos públicos.

6. Infraestructura ITS de México. Diseño en proceso. La finalización de la parte de diseño del Sistema Inteligente de Transporte es coordinada entre la Agencia Nacional de Aduanas de México (ANAM), la Secretaría de la Defensa Nacional de México (SEDENA) y la SICT. Los términos de referencia para su contratación deben incorporar elementos que brinden información al usuario, retroalimentación al lado estadounidense sobre carriles de circulación que serán intercambiables, tiempos de espera, pago de peaje, etc. Incluye infraestructura tecnológica de lectura peaje en carreteras y sistemas relacionados (por ejemplo, sistemas de comunicación por fibra y wireless, equipos de detección de vehículos, señales de

that are to be located on the Mexico side. The Control Center, located inside the border port, will monitor this information.

7. Access Road. The Mexican access road has been designed with a length of 1.25 kilometers, with eight (8) lanes of circulation, four (4) in each direction; it includes the construction of the Vial Distributor for the access to the port from the Tijuana-Tecate freeway, as well as lateral streets at the same level for local access.

*The Project includes all of the items 1 through 7. The Construction Project consists of items 2 – 7. The SANDAG Construction Project consists of items 2 – 4.

mensajería y equipos relacionados), incluyendo los componentes del Sistema de Lectura de Peaje que se ubicarán en la sección de México. El Centro de Control, ubicado dentro del puerto fronterizo, monitoreará esta información.

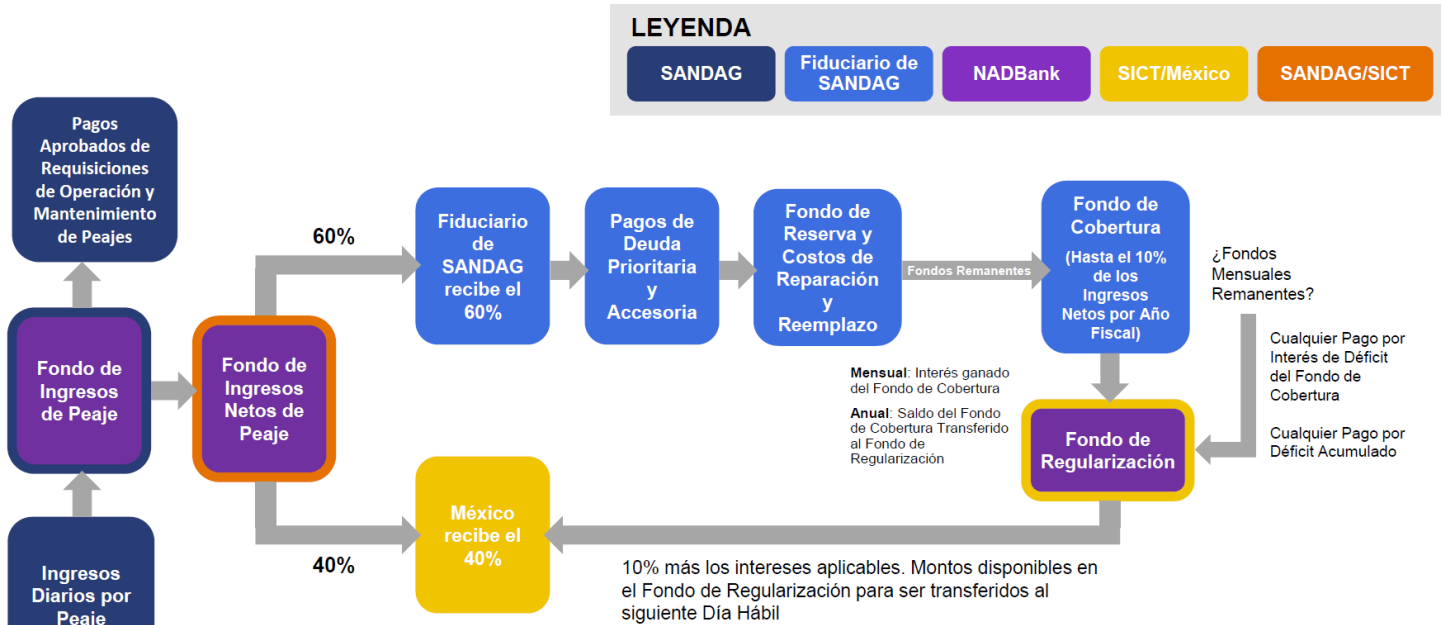
7. Vía de Acceso. La vialidad de acceso ha sido diseñada con una longitud de 1.25 km con 8 carriles de circulación, 4 por sentido; incluye la construcción del Distribuidor Vial para el acceso al puerto desde la autopista Tijuana–Tecate, así como calles laterales a nivel para acceso local.

*El Proyecto incluye todos los elementos enumerados del 1 al 7. El Proyecto de Construcción consta de los elementos enumerados del 2 al 7. El Proyecto de Construcción de SANDAG consta de los elementos enumerados del 2 a 4.

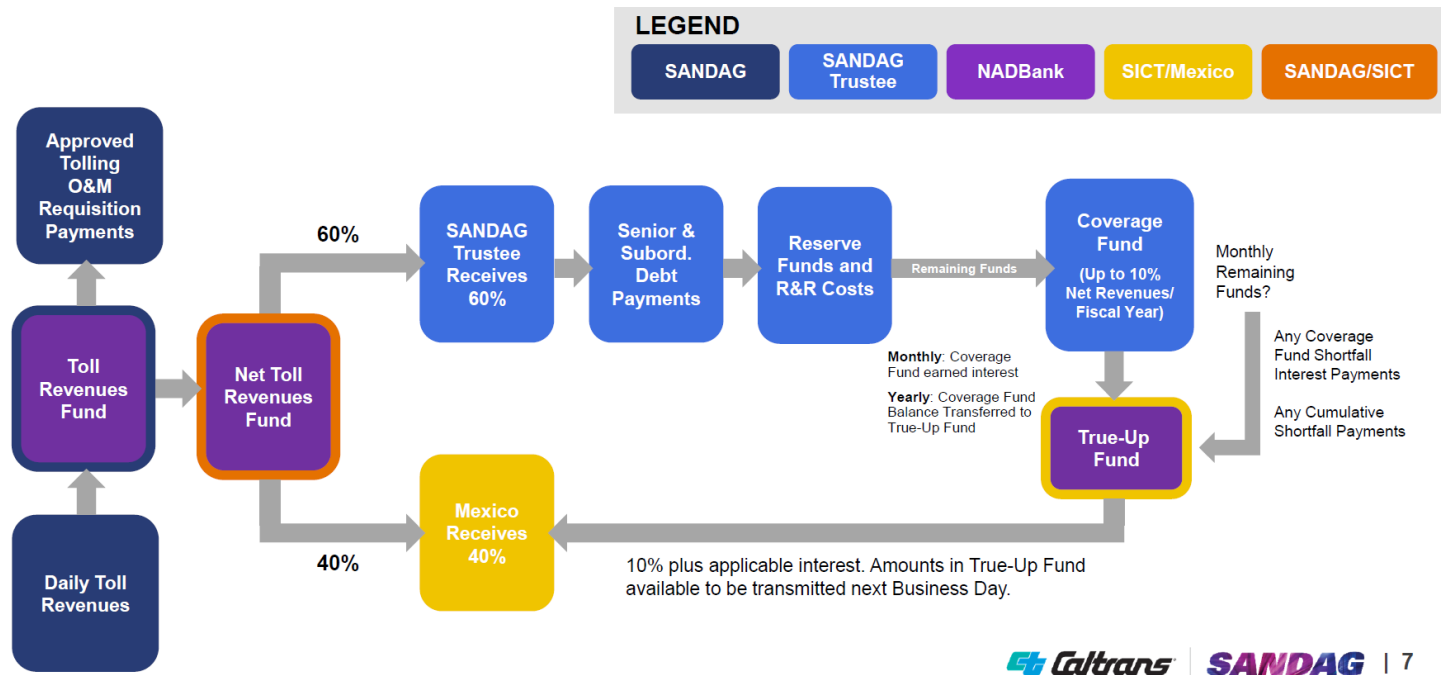
EXHIBIT B / ANEXO B



EXHIBIT C

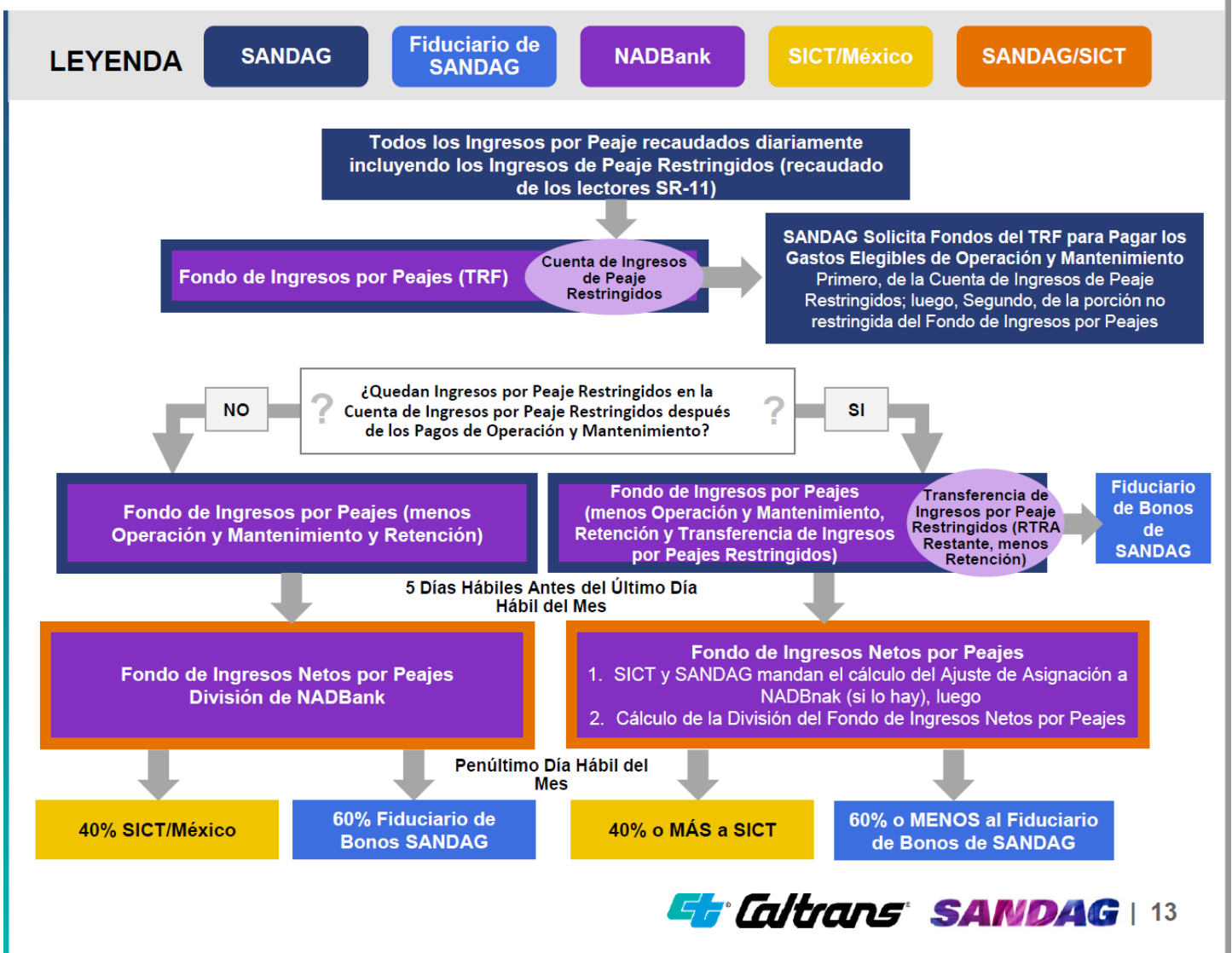


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Exhibit D



LEGEND

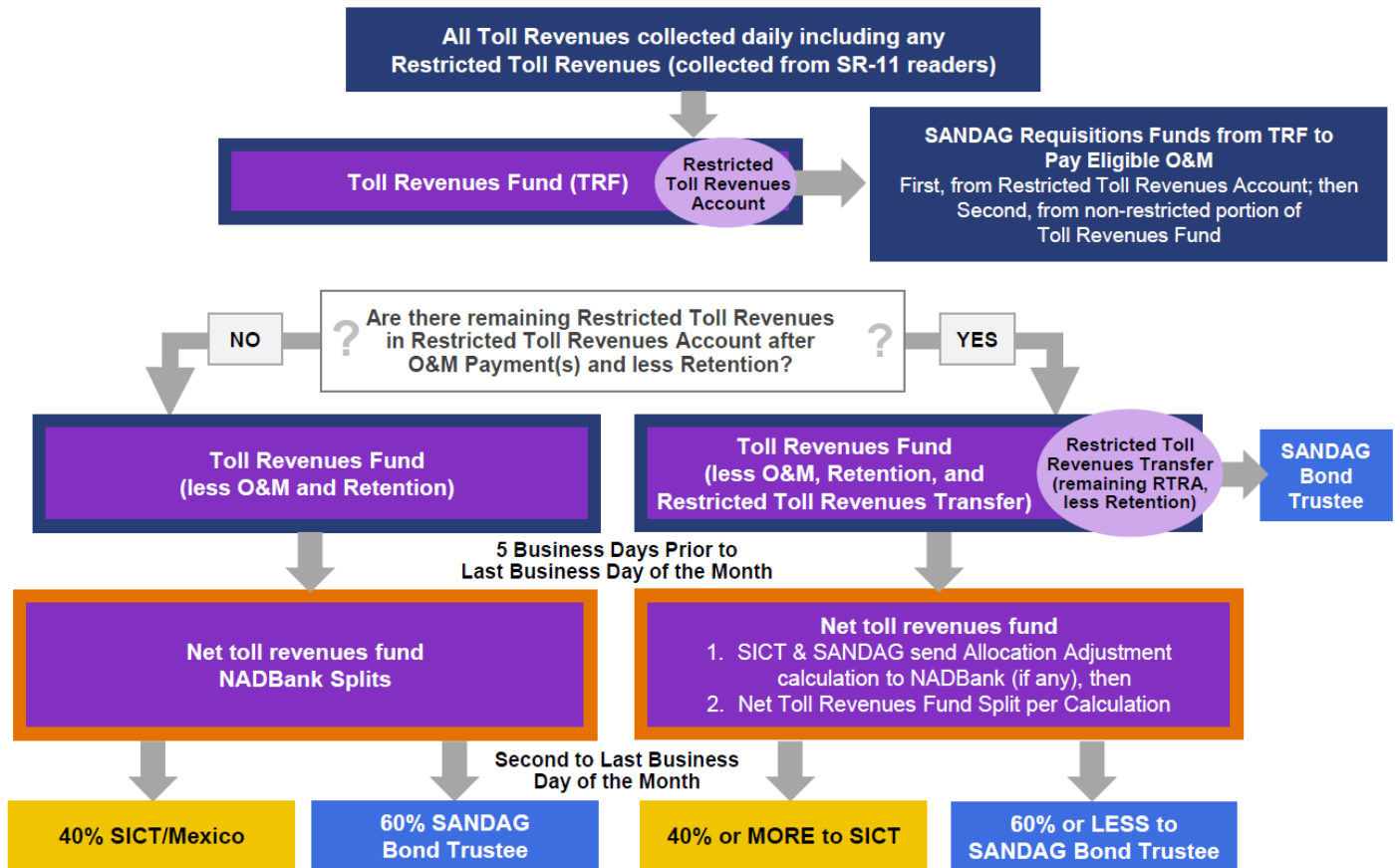
SANDAG

SANDAG
Trustee

NADBank

SICT/Mexico

SANDAG/SICT



Custodial Agreement**among****North American Development Bank,
as Custodian****Ministry of Infrastructure, Communications and
Transportation of the United Mexican States,****and****San Diego Association of Governments**

Dated as of _____, 2024

W i t n e s s e t h:

Whereas, SICT and SANDAG have entered into that certain Amended and Restated Agreement between The Ministry of Infrastructure, Communications and Transportation of the United Mexican States, and The San Diego Association of Governments, California, United States of America, Concerning the Collection and Allocation of Toll Revenues Relating to the New International Border Crossing and Port Mesa de Otay II – Otay Mesa East, dated as of _____, 2024 (as it may be further amended or modified from time to time, the “*Toll Allocation Agreement*”);

Whereas, the Toll Allocation Agreement contemplates NADBank serving as custodian of certain toll revenues (as defined herein the “*Toll Revenues*”) generated by the Port Mesa de Otay II – Otay Mesa East Port of Entry Project (as further described in the Toll Allocation Agreement, the “*Project*”) pursuant to a custodial agreement, undertaking certain functions described in the Toll Allocation Agreement; and

Whereas, SICT and SANDAG desire to appoint NADBank to serve as the Custodian hereunder, as contemplated by the Toll Allocation Agreement, and NADBank is willing to accept such appointment;

Now, Therefore, in consideration of the mutual agreements herein contained and for other good and valuable consideration, the receipt and adequacy of

Contrato de Depósito**celebrado entre****North American Development Bank,
como Depositario****Secretaría de Infraestructura, Comunicaciones y
Transportes de los Estados Unidos Mexicanos,****y****San Diego Association of Governments**

De fecha ____ de ____ de 2024

C o n s i d e r a n d o:

CONSIDERANDO, que SICT y SANDAG celebraron cierto Acuerdo entre la Secretaría de Infraestructura, Comunicaciones y Transportes de los Estados Unidos Mexicanos y San Diego Association of Governments, del Estado de California, Estados Unidos de América, respecto a la Cobro y Distribución de los Ingresos por Peaje relacionados con el Nuevo Cruce y Puerto Fronterizo Internacional Mesa de Otay II - Otay Mesa East, de fecha ____ 2024(según el mismo sea modificado de tiempo en tiempo, el “*Acuerdo de Distribución de Peaje*”);

CONSIDERANDO, que el Acuerdo de Distribución de Peaje prevé que NADBank fungirá como depositario de ciertos ingresos por peaje (según se definen en el presente documento, los “*Ingresos por Peaje*”) generados por el Proyecto del Nuevo Cruce y Puerto Fronterizo Internacional Mesa de Otay II - Otay Mesa East (según se describe en el Acuerdo de Distribución de Peaje, el “*Proyecto*”) conforme a un Contrato de Depósito, y contraerá ciertas funciones las cuales se describen en el Acuerdo de Distribución de Peaje; y

CONSIDERANDO, que SICT, y SANDAG desean designar a NADBank para que actúe como Depositario en virtud del presente, tal y como se prevé en el Acuerdo de Distribución de Peaje, y que NADBank acepta dicha designación;

POR LO TANTO, en consideración de los entendimientos mutuos aquí contenidos y otros acuerdos de buena fe, cuya recepción y suficiencia se

which are hereby acknowledged, the parties agree as follows:

ARTICLE I DEFINITIONS

Section 1.01 Definitions; Rules of Construction.

(a) As used in this Custodial Agreement, the following terms shall have the meanings set forth below:

“Authorized Mexican Representative” means the _____ or _____ of SICT, or the designee of either, or any other officer or employee of SICT specified as such in writing to the Custodian and SANDAG.

“Authorized SANDAG Representative” means SANDAG’s Chief Executive Officer or his designee, or any other officer or employee of SANDAG specified as such in writing to the Custodian and SICT.

“Coverage Fund” means the fund by that name to be created under the Indenture and held by the Trustee, to be funded and applied as described in Section 3.03 of the Toll Allocation Agreement.

“Custodial Agreement” has the meaning assigned to such term in the Preamble hereof.

“Custodian” has the meaning assigned to such term in the Preamble hereof.

“Fiscal Year” means the annual period from July 1 to June 30.

“Indenture” shall have the meaning ascribed thereto in the Toll Allocation Agreement.

“NADBank” has the meaning assigned to such term in the Preamble hereof.

“Net Revenues Fund” means the fund by that name described in Section 3.03 hereof.

reconocen por medio del presente, las partes acuerdan lo siguiente:

ARTÍCULO I DEFINICIONES

Sección 1.01 Definiciones; reglas de interpretación.

(a) Para los propósitos del presente Contrato de Depósito, los siguientes términos tendrán el significado que se indica a continuación:

“Representante Mexicano Autorizado” significa el _____ o _____ de SICT, o cualquier otro funcionario o empleado de SICT especificado como tal por escrito al Depositario y a SANDAG.

“Representante Autorizado de SANDAG” se refiere al Director General (*Chief Executive Officer*) de SANDAG o a la persona designada por este, o a cualquier otro director o empleado de SANDAG especificado como tal por escrito al Depositario, y a SICT.

“Fondo de Cobertura” significa el fondo con ese nombre que se creará en virtud del Contrato de Fideicomiso y que será mantenido por el Fiduciario, para ser financiado y aplicado según se describe en la Sección 3.05 del Acuerdo de Distribución de Peaje.

“Contrato de Depósito” tiene el significado asignado a dicho término en el Preámbulo del presente documento.

“Depositario” tiene el significado asignado a dicho término en el Preámbulo del presente documento.

“Año Fiscal” se refiere al periodo anual que comprende del 1 de Julio al 30 de Junio.

“Contrato de Fideicomiso” tiene el significado asignado a dicho término en el Acuerdo de Distribución de Peaje.

“NADBank” tiene el significado asignado a dicho término en el Preámbulo del presente documento.

“Cuenta de Ingresos Netos” significa la cuenta de dicho nombre previsto en la Sección 3.03 del presente.

“Parties” means, collectively, the Custodian, SICT and SANDAG.

“Requisition” means a written requisition of funds from the Toll Revenues Fund, delivered by SANDAG to the Custodian, making the certifications set forth in Section 3.02(d) hereof and signed by an Authorized SANDAG Representative.

“Restricted Toll Revenues” means that portion of Toll Revenues, if any, generated from tags read through the Toll Reading System on the United States side of the Project collected during any period that the components of the Toll Reading System on the Mexico-side of the Project are not operating properly.

“Restricted Toll Revenues Account” means the account by that name established in the Toll Revenues Fund as described in Section 3.02 hereof.

“SANDAG” has the meaning assigned to such term in the Preamble hereof.

“SICT” has the meaning assigned to such term in the Preamble hereof.

“Toll Allocation Agreement” has the meaning assigned to such term in the Recitals hereof.

“Toll Revenues Fund” means the fund by that name described in Section 3.02 hereof.

“True-Up Fund” means the fund by that name described in Section 3.04 hereof.

“Trustee” shall have the meaning ascribed to that term in the Toll Allocation Agreement.

(b) Capitalized terms not otherwise defined in this Custodial Agreement shall have the respective meanings assigned to them in the Toll Allocation Agreement. Subsequent amendments to the definitions of capitalized terms contained in the Toll Allocation Agreement shall be deemed to amend the corresponding defined terms herein, unless the Parties hereto shall otherwise agree in writing. The interpretive

“Partes” significa, conjuntamente, el Depositario, SICT, y SANDAG.

“Solicitud” se refiere a una solicitud de fondos de la Cuenta de Ingresos por Peaje, entregada por SANDAG al Depositario por escrito, en la que consten las certificaciones establecidas en la Sección 3.02(cd) del presente Contrato y firmada por un Representante Autorizado de SANDAG.

“Ingresos de Peaje Restringidos” significa la porción de los Ingresos de Peaje, si los hubiere, generados por las lecturas de *tags* por medio del Sistema de Lectura de Peaje en el lado de Estados Unidos del Proyecto, recolectados durante cualquier período en que los componentes del Sistema de Lectura de Peaje en el lado de México del Proyecto no estén funcionando correctamente.

“Cuenta de Ingresos de Peaje Restringidos” significa la cuenta con ese nombre establecida en la Cuenta de Ingresos de Peaje según se describe en la Sección 3.02 del presente Contrato.

“SANDAG” tiene el significado asignado a dicho término en el Preámbulo del presente documento.

“SICT” tiene el significado asignado a dicho término en el Preámbulo del presente documento.

“Acuerdo de Distribución de Peaje” tiene el significado que se le atribuye a dicho término en los Considerandos del presente documento.

“Cuenta de Ingresos por Peaje” significa la cuenta de dicho nombre descrita en la Sección 3.02 del presente Contrato.

“Fondo de Regularización” significa el fondo con ese nombre descrito en la Sección 3.04 del presente.

“Fiduciario” tiene el significado asignado a dicho término en el Acuerdo de Distribución de Peaje.

(b) Los términos en mayúsculas no definidos en el presente Contrato de Depósito tendrán el significado que se les atribuye en el Acuerdo de Distribución de Peaje. Aquellas modificaciones que se hagan a los términos definidos en mayúscula incluidos en el Acuerdo de Distribución de Peaje se considerarán como modificaciones a los términos definidos aquí previstos, a menos que las Partes acuerden lo contrario

provisions set forth in Toll Allocation Agreement shall apply to this Custodial Agreement and are hereby incorporated by reference into this Custodial Agreement as if set forth fully herein. If there exists any inconsistency between the provisions of the Toll Allocation Agreement and the provisions herein, the provisions of the Toll Allocation Agreement shall govern.

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.01 Representations and Warranties of the Custodian.

The Custodian hereby represents and warrants to SICT and SANDAG the following:

(a) It is (i) an international organization, duly organized and validly existing under the laws of the United States of America and the United Mexican States, and (ii) duly qualified and in possession of all requisite authority, power, licenses, permits and franchises in order to execute, deliver and perform its obligations under the terms of this Custodial Agreement;

(b) The execution, delivery and performance of this Custodial Agreement has been duly authorized by all necessary corporate action, and the execution and delivery of this Custodial Agreement by it in the manner contemplated herein and the performance of and compliance with the terms hereof by it will not (i) violate, contravene or create a default under any applicable laws, licenses or permits, or (ii) violate, contravene or create a default under any charter document or bylaw of the Custodian or any contract, agreement, or instrument to which it or by which any of its property may be bound and will not result in the creation of any lien, security interest or other charge or encumbrance upon or with respect to any of its property;

(c) No consent or authorization of, filing with, or other act by or in respect of, any arbitrator or governmental authority and no consent of any other Person (including, without limitation, any creditor of the Custodian) is required in connection with the execution, delivery, performance, validity or enforceability of this Custodial Agreement;

por escrito. Las disposiciones previstas en el Acuerdo de Distribución de Peaje sobre interpretación se aplicarán a este Contrato de Depósito como si se incluyeran en este Contrato. En caso de contradicción entre las disposiciones del Acuerdo de Distribución de Peaje y las disposiciones aquí previstas, las disposiciones del Acuerdo de Distribución de Peaje prevalecerán.

ARTÍCULO II DECLARACIONES Y GARANTÍAS

Sección 2.01 Declaraciones y Garantías del Depositario.

El Depositario declara y garantiza a SICT, y SANDAG lo siguiente:

(a) Es (i) una organización internacional, debidamente organizada y válidamente existente bajo las leyes de los Estados Unidos de América y de los Estados Unidos Mexicanos, y (ii) está debidamente calificada y cuenta con las autorizaciones, licencias y permisos necesarios para suscribir, ejecutar y cumplir con sus obligaciones de conformidad con los términos de este Contrato de Depósito;

(b) La suscripción, ejecución y cumplimiento de este Contrato de Depósito ha sido debidamente autorizada mediante las acciones corporativas necesarias, y la suscripción y ejecución de este Contrato de Depósito por parte del Depositario en la forma prevista en este documento, así como el cumplimiento de los términos del mismo por parte del Depositario no (i) viola, contraviene o crea un incumplimiento bajo ninguna ley aplicable, (ii) viola, contraviene o crea un incumplimiento en virtud de cualquier documento constitutivo o estatuto del Depositario, ni cualquier contrato, acuerdo o instrumento en el que el Depositario o su patrimonio puedan estar vinculados y no dará lugar a la creación de ningún gravamen, garantía u otra carga o interés sobre o con respecto a su patrimonio;

(c) No se requiere ningún consentimiento, autorización, presentación, o cualquier otro acto por parte de o con respecto a, cualquier árbitro o autoridad gubernamental y ningún consentimiento de cualquier otra Persona (incluyendo, sin limitación, cualquier acreedor del Depositario) en relación con la

(d) This Custodial Agreement, when executed and delivered by the Custodian will constitute valid, legal and binding obligations of the Custodian, enforceable against it in accordance with its terms, except as the enforcement hereof may be limited by applicable debtor relief laws and that certain equitable remedies may not be available regardless of whether enforcement is sought in equity or at law;

(e) The Custodian does not believe, nor does it have reason or cause to believe, that it cannot perform its obligations contained in this Custodial Agreement; and

(f) There is no litigation pending or, to the best of the Custodian's knowledge, threatened which, if determined adversely to it, would adversely affect the execution, delivery or enforceability of this Custodial Agreement, or any of the duties or obligations of the Custodian hereunder, or which would have a material adverse effect on the financial condition of the Custodian.

Section 2.02 Representations and Warranties of SICT

SICT hereby represents and warrants to the Custodian and SANDAG the following:

(a) It is an Agency of the Federal Executive Branch, which has the authority to enter into this Custodial Agreement, in accordance with the provisions set forth in articles 90 of the Constitution of the United Mexican States (Constitución Política de los Estados Unidos Mexicanos); 1, 2, section I, 26 and 36 sections XXI, XXII, XXIV, XXVII of the Organic Law of the Federal Public Administration (Ley Orgánica de la Administración Pública Federal).

(b) Mr. Jorge Nuno, the Minister of Infrastructure, Communications and Transportation, has the authority to enter into this Custodial Agreement, pursuant to the provisions of article 2, section I and 4 of the Internal Regulations of the Ministry of Infrastructure, Communications and Transportation (Reglamento Interior de la Secretaría de Infraestructura, Comunicaciones y Transportes).

suscripción, ejecución, cumplimiento, validez o exigibilidad de este Contrato de Depósito;

(d) El presente Contrato de Depósito, una vez suscrito y firmado por el Depositario, constituirá una obligación válida, legal y vinculante; exigible en su contra de conformidad con sus términos, salvo que su ejecución pueda estar limitada por las leyes de exoneración aplicables y que determinados recursos en equidad puedan no estar disponibles con independencia de que la ejecución que se solicite en equidad o en derecho;

(e) El Depositario no declara, ni tiene razón o causa para declarar, que no pueda cumplir con sus obligaciones de conformidad con este Contrato de Depósito; y

(f) No hay ningún litigio pendiente o, según a su leal saber y entender, amenaza de litigio que, si se resuelve en su contra, afectaría negativamente la suscripción, ejecución y cumplimiento de este Contrato de Depósito, o cualquiera de las obligaciones del Depositario aquí previstas, o que tendría un efecto material adverso sobre la situación financiera del Depositario.

Sección 2.02 Declaraciones y garantías de la SICT.

SICT declara y garantiza al Depositario y a SANDAG lo siguiente:

(a) Que es una Dependencia del Poder Ejecutivo Federal, que cuenta con las atribuciones necesarias para celebrar el presente Contrato de Depósito, de conformidad con lo señalado en los artículos 90 de la Constitución Política de los Estados Unidos Mexicanos; 1º, 2º, fracción I, 26 y 36 fracciones XXI, XXII, XXIV, XXVII de la Ley Orgánica de la Administración Pública Federal.

(b) El Sr. Jorge Nuño Lara, Secretario de Infraestructura, Comunicaciones y Transportes, cuenta con las facultades necesarias para celebrar el presente Contrato, en términos de lo dispuesto por los artículos 2º, fracción I y 4º del Reglamento Interior de la Secretaría de Infraestructura, Comunicaciones y Transportes.

Section 2.03 Representations and Warranties of SANDAG.

SANDAG hereby represents and warrants to the Custodian and SICT the following:

(a) It is a local agency of the State of California, which has authority to enter this Custodial Agreement in accordance with the provisions of the San Diego Regional Transportation Consolidation Act (California Public Utilities Code Sections 132350 et seq.) and the Otay Mesa East Toll Facility Act (California Streets and Highways Code Sections 31460 et seq.), and the amendments thereto.

(b) _____, the _____ of SANDAG, has the authority to enter into this Custodial Agreement.

ARTICLE III
APPOINTMENT AND DUTIES OF THE
CUSTODIAN

Section 3.01 Appointment of Custodian.

Subject to the terms and conditions hereof, SICT and SANDAG each hereby appoints NADBank, and NADBank hereby accepts such appointment, to serve as the Custodian and perform the duties of the Custodian as set forth herein. In performing its duties hereunder, the Custodian agrees to act in accordance with customary professional standards applicable to financial institutions, custodians and fiduciaries, using that degree of skill and attention that a custodian and fiduciary would exercise with respect to cash and securities that it holds for itself or others. Except as provided in Section 4.07, the Custodian shall not assign or otherwise transfer to any other person or entity the performance or the obligation to carry out any of its duties, responsibilities or obligations under this Custodial Agreement.

Sección 2.03 Declaraciones y garantías de SANDAG.

SANDAG declara y garantiza al Depositario y a SICT lo siguiente:

(a) Que es una agencia local del Estado de California, que cuenta con las atribuciones necesarias para celebrar el presente Contrato de Depósito de conformidad con lo previsto en la Ley de Consolidación del Transporte Regional de San Diego (San Diego Regional Transportation Consolidation Act), (Código de Servicios Públicos de California, Secciones 132350 et seq) (California Public Utilities Code Section 132350 et seq) y la Ley de Implementación de Peaje Otay Mesa East (Otay Mesa East Toll Facility Act) (Código de Calles y Carreteras de California Secciones 31460 et seq.) (California Streets and Highways Code Sections 31460 et seq), y sus modificaciones al mismo.

(b) Que el señor _____, de SANDAG, cuenta con las facultades necesarias para celebrar el presente Contrato de Depósito.

ARTÍCULO III
NOMBRAMIENTO Y FUNCIONES DEL
DEPOSITARIO

Sección 3.01 Nombramiento del Depositario.

Sujeto a los términos y condiciones del presente documento, mediante el presente Contrato, SICT, y SANDAG nombran a NADBank como Depositario y NADBank acepta dicho nombramiento para actuar y ejercer las funciones de Depositario, de conformidad con lo previsto en el presente documento. En el ejercicio de sus funciones, el Depositario se compromete a actuar de conformidad con los estándares profesionales aplicables a instituciones financieras, depositarios y fiduciarios, utilizando cierto grado de habilidad y atención tal y como un depositario o un fiduciario actuando con debido cuidado, respecto al efectivo y a los valores que conserva para sí mismos o para otros. Excepto por lo previsto en la Sección 4.07, el Depositario no cederá ni transferirá de cualquier otra forma, el ejercicio o la obligación de ejercer cualesquiera de sus obligaciones bajo el presente Contrato de Depósito, a cualquier otra persona o entidad.

Section 3.02 Establishment and Operation of Toll Revenues Fund.

(a) SANDAG hereby instructs the Custodian to establish the Toll Revenues Fund, to be held and maintained by the Custodian for the benefit of SANDAG, as a segregated account subject to the provisions herein.

(b) SANDAG hereby instructs the Custodian to establish the Restricted Toll Revenues Account, to be held and maintained by the Custodian as a separate account within the Toll Revenues Fund subject to the provisions herein. Amounts on deposit in the Restricted Toll Revenues Account shall be used solely to pay Operations and Maintenance Expenses as specified by SANDAG or pursuant to a transfer described in subsection (e)(iii) hereof, but shall not be transferred to the Net Revenues Fund.

(c) From and after the Commencement of Toll Road Operations, SANDAG shall deposit with the Custodian, on or prior to 3:00 p.m. Central time on each Business Day, all Toll Revenues collected by SANDAG during such Business Day (together with any Toll Revenues collected by SANDAG during the prior Business Day but not yet deposited with the Custodian), to be credited to the Toll Revenues Fund. Such deposits shall be made by wire transfer to an account specified by the Custodian to SANDAG in writing. If any portion of the Toll Revenues collected on a Business Day consists of Restricted Toll Revenues, SANDAG shall notify the Custodian in writing and shall direct the Custodian to deposit all such Restricted Toll Revenues in the Restricted Toll Revenues Account.

(d) Upon SANDAG's delivery to the Custodian of a Requisition certifying that (i) a specified sum is needed to pay (or reimburse SANDAG for the payment of) Operation and Maintenance Expenses for the current month or the first week of the following month and (ii) such Operation and Maintenance Expenses are included in the current Operation and Maintenance Expenses Budget, the Custodian shall promptly pay such specified sum to SANDAG, first from amounts on deposit in the Restricted Toll Revenues Account if SANDAG has certified eligibility of such amounts to be so expended, and after amounts in such account are

Sección 3.02 Apertura y funcionamiento de la Cuenta de Ingresos por Peaje.

(a) SANDAG instruye al Depositario para que abra la Cuenta de Ingresos por Peaje, que será mantenida por el Depositario como una cuenta separada en beneficio de SANDAG, sujeta a las disposiciones aquí previstas.

(b) Por la presente, SANDAG ordena al Depositario que establezca la Cuenta de Ingresos de Peaje Restringidos, que el Depositario mantendrá como una cuenta separada dentro de la Cuenta de Ingresos de Peaje sujeta a las disposiciones del presente documento. Los importes depositados en la Cuenta de Ingresos de Peaje Restringidos se utilizarán exclusivamente para pagar Gastos de Operación y Mantenimiento especificados por SANDAG o conforme a una transferencia, según se describe en el inciso (e)(iii) del presente, pero no se transferirán al Fondo de Ingresos Netos.

(c) A partir del Comienzo de las Operaciones de la Carretera de Peaje, SANDAG depositará con el Depositario, en o antes de las 3:00 p.m. hora central de cada Día Hábil, todos los Ingresos por Peaje recaudados por SANDAG durante dicho Día Hábil (junto con cualquier Ingreso por Peaje recaudado por SANDAG durante el Día Hábil anterior pero aún no depositado con el Depositario), para acreditarse a la Cuenta de Ingresos por Peaje. Dichos depósitos se realizarán mediante transferencia bancaria a una cuenta especificada por escrito por el Depositario a SANDAG. Si alguna parte de los Ingresos de Peaje recaudados en un Día Hábil consiste en Ingresos de Peaje Restringidos, SANDAG notificará por escrito al Depositario y le ordenará que deposite todos esos Ingresos de Peaje Restringidos en la Cuenta de Ingresos de Peaje Restringidos.

(d) Tras la entrega por parte de SANDAG al Depositario de una Solicitud certificando que (i) se necesita una suma específica para pagar (o reembolsar a SANDAG por el pago de) los Gastos de Operación y Mantenimiento para el mes en curso o para la primera semana del mes siguiente; y (ii) dichos Gastos de Operación y Mantenimiento se incluyen en el actual Presupuesto de Gastos de Operación y Mantenimiento, el Depositario pagará sin retraso dicha suma especificada a SANDAG, primero desde los fondos depositados en la Cuenta de Ingresos de Peaje Restringidos si SANDAG ha certificado la elegibilidad

depleted or otherwise ineligible to be expended, from remaining amounts on deposit in the Toll Revenues Fund, by wire transfer to an account specified by SANDAG to the Custodian in writing. Requisitions may be submitted on any Business Day, but SANDAG will endeavor to submit no more than one Requisition in any week. Requisitions received by the Custodian on or before 4:30 p.m. Central time on a Business Day shall be paid within two (2) Business Days. When SANDAG submits a Requisition to NADBank pursuant to this subsection, it shall also provide a copy of the same to the Authorized Mexican Representative.

(e) No later than five (5) Business Days prior to the last Business Day of each month, the Custodian shall (i) retain in the Toll Revenues Fund (and in the Restricted Toll Revenues Account, as applicable) such amounts specified by SANDAG in writing as needed for Operation and Maintenance Expenses (as provided in the current Operations and Maintenance Budget) expected to come due before sufficient additional Toll Revenues are expected to be received to pay such Operations and Maintenance Expenses (the “Retention”), (ii) transfer from the Toll Revenues Fund (excluding any amounts on deposit in the Restricted Toll Revenues Account) all amounts remaining after the Retention to the Net Revenues Fund and (iii) transfer all amounts then on deposit in the Restricted Toll Revenues Account (less amounts retained pursuant to item (i) hereof) to the Trustee to be applied as set forth in the Indenture, by wire transfer to an account specified by the Trustee to the Custodian in writing.

(f) SANDAG and SICT have a joint desire (i) to avoid the need to collect Restricted Toll Revenues and (ii) if such revenues are required to be collected, to ensure that they are used to pay eligible Operations and Maintenance Expenses. Both Parties will work collaboratively to minimize the need for any Restricted Toll Revenues Transfer.

Section 3.03 Establishment and Operation of Net Revenues Fund.

de dichos montos para ser erogados, y después de que los montos en dicha cuenta sean agotados o no sean elegibles para ser erogados, y una vez que a dicha cuanta se le hayan agotado los recursos, desde los fondos restantes depositados en la Cuenta de Ingresos de Peaje, mediante transferencia bancaria a una cuenta especificada por SANDAG al Depositario por escrito. Las Solicitudes podrán presentarse cualquier Día Hábil, pero no podrá presentarse más de una solicitud por semana. Las solicitudes recibidas por el Depositario a más tardar a las 4:30 p.m., hora del centro, de un Día Hábil se pagarán a más tardar el segundo (2) Día Hábil siguiente. Cuando SANDAG presente una Solicitud al NADBank de conformidad con esta subsección, también proporcionará una copia de la misma al representante mexicano autorizado.

(e) A más tardar cinco (5) Días Hábiles antes del último Día Hábil de cada mes, el Depositario deberá (i) retener en la Cuenta de Ingresos por Peaje la cantidad que SANDAG especifique por escrito como necesaria para cubrir los Gastos de Operación y Mantenimiento (según lo previsto en el Presupuesto de Operaciones y Mantenimiento vigente) que se espera venza antes de recibir los Ingresos por Peaje adicionales suficientes para pagar dichos Gastos de Operación y Mantenimiento (la “Retención”); (ii) transferir de la Cuenta de Ingresos de Peaje (excluidas las cantidades depositadas en la Cuenta de Ingresos de Peaje Restringidos) al Fondo de Ingresos Netos todas las cantidades restantes después de la Retención; y (iii) transferir todas las cantidades depositadas en ese momento en la Cuenta de Ingresos por Peaje Restringidos (menos las cantidades retenidas conforme al inciso (i) del presente), al Fiduciario para que las aplique según lo establecido en el Contrato, mediante transferencia bancaria a una cuenta especificada por escrito por el Fiduciario al Depositario.

(f) SANDAG y SICT desean de manera conjunta (i) evitar tener la necesidad de recaudar Ingresos de Peaje Restringidos y (ii) en caso de que sea necesario recaudar dichos ingresos, asegurar que sea utilizados para pagar los Gastos elegibles de Operación y Mantenimiento. Ambas Partes trabajarán en colaboración para minimizar la necesidad de realizar cualquier Transferencia de Ingresos de Peaje Restringidos.

Sección 3.03 Apertura y funcionamiento de la Cuenta de Ingresos Netos.

(a) SICT and SANDAG each hereby instructs the Custodian to establish the Net Revenues Fund, for the benefit of SICT and SANDAG, to be held and maintained by the Custodian as a segregated account subject to the provisions herein.

(b) The Custodian shall deposit in the Net Revenues Fund, no later than five (5) Business Days prior to the last Business Day of each month, the amounts from the Toll Revenues Fund described in Section 3.02(e) hereof.

(c) No later than the second to last Business Day of each month, from amounts in the Net Revenues Fund, the Custodian shall allocate and transfer (i) 60% (sixty percent) of Net Revenues therein to the Trustee (on behalf of SANDAG) to be applied as set forth in the Indenture and the TIFIA Loan Agreement, and (ii) 40% (forty percent) of Net Revenues therein to SICT for the benefit of the Mexican Government, in each case by wire transfer to an account specified by SANDAG or SICT, as applicable, to the Custodian in writing.

(d) If the Custodian receives a single, written notice, signed by both SICT and SANDAG, that the provisions for modifying the allocation of Net Revenues contained in Section 3.04 of the Toll Allocation Agreement have been met, then on and after the July 1 following receipt of such notice the allocation of Net Revenues described in subsection (c) (above) shall be changed accordingly, such that no later than the second to last Business Day of each month, from amounts in the Net Revenues Fund, the Custodian shall allocate and transfer (i) 50% (fifty percent) of Net Revenues therein to the Trustee (on behalf of SANDAG) to be applied as set forth in the Indenture and the TIFIA Loan Agreement, and (ii) 50% (fifty percent) of Net Revenues therein to SICT for the benefit of the Mexican Government, in each case by wire transfer to an account specified by SANDAG or SICT, as applicable, to the Custodian in writing.

(e) Notwithstanding the provisions in paragraphs (c) and (d) above, if the Custodian receives an Allocation Adjustment Direction signed by both SICT and SANDAG prior to the third to last Business Day of any month in accordance with Section 3.06 of the Toll

(a) Mediante el presente Contrato, tanto SICT, como SANDAG instruyen al Depositario para que abra la Cuenta Ingresos Netos en beneficio de SICT y SANDAG, que será mantenida por el Depositario como una cuenta segregada, sujeta a las disposiciones aquí previstas.

(b) El Depositario depositará en la Cuenta de Ingresos Netos, a más tardar cinco (5) Días Hábiles antes del último Día Hábil de cada mes, las cantidades de la Cuenta de Ingresos por Peaje descritas en la Sección 3.02(e) del presente documento.

(c) De las cantidades de la Cuenta de Ingresos Netos, a más tardar el penúltimo Día Hábil de cada mes, el Depositario asignará y transferirá (i) el 60% (sesenta por ciento) de los Ingresos Netos al Fiduciario (en nombre de SANDAG) para que se apliquen según lo previsto en el Contrato de Fideicomiso y en el Contrato de Crédito TIFIA, y (ii) el 40% (cuarenta por ciento) de los Ingresos Netos a SICT en beneficio del Gobierno Mexicano, en cada caso, mediante transferencia bancaria a una cuenta especificada por SANDAG o SICT al Depositario por escrito, según corresponda.

(d) En caso que el Depositario reciba una notificación por escrito por parte de SICT y SANDAG sobre el cumplimiento de aquellas disposiciones que modifican la distribución de los Ingresos Netos de conformidad con la Sección 3.04 del Acuerdo de Distribución de Peaje, entonces a partir del 1 de julio siguiente a la recepción de dicha notificación, la distribución de los Ingresos Netos descrita en la subsección (c) (arriba) se modificará en consecuencia, de forma que a más tardar el penúltimo Día Hábil de cada mes, el Depositario asignará y transferirá de la Cuenta de Ingresos Netos (i) el 50% (cincuenta por ciento) de los Ingresos Netos ahí depositados al Fiduciario (en nombre de SANDAG) para que se apliquen según lo previsto en el Contrato de Fideicomiso y el Contrato de Crédito TIFIA, y (ii) el 50% (cincuenta por ciento) de los Ingresos Netos ahí depositados a SICT en beneficio del Gobierno Mexicano, en cada caso mediante transferencia bancaria a la cuenta especificada por SANDAG o SICT al Depositario por escrito, según corresponda.

(e) Sin perjuicio de lo dispuesto en los párrafos (c) y (d) anteriores, si el Depositario recibe una Instrucción de Ajuste de Asignación firmada tanto por SICT y SANDAG, antes del tercer último Día Hábil de cualquier mes conforme a la Sección 3.06 del Acuerdo

Allocation Agreement, the Custodian shall adjust distributions from the Net Revenues Fund for such month in accordance with such Allocation Adjustment Direction.

Section 3.04 Establishment and Operation of True-Up Fund.

(a) SANDAG and SICT hereby instruct the Custodian to establish the True-Up Fund, pursuant to Section 3.03(e) of the Toll Allocation Agreement, to be held and maintained by the Custodian as a segregated account subject to the provisions herein. SICT shall be the beneficial owner of all amounts on deposit in the True-Up Fund.

(b) Monthly on the first Business Day of each month, SANDAG shall cause the Trustee to transfer to the Custodian the investment earnings on (but not the corpus of) amounts deposited in the Coverage Fund attributable to the prior month pursuant to Section 3.03(d) of the Toll Allocation Agreement. SANDAG may also cause the Trustee to transfer to the Custodian on the first Business Day of any month Remaining Funds to pay any unpaid Coverage Fund Shortfall Interest and/or any Cumulative Shortfall Liability that SANDAG owes to SICT. SANDAG shall designate the nature of all transfers pursuant to this subsection (b) to the Custodian and Custodian shall account for and record such payments accordingly while also depositing such amounts in the True-Up Fund and remitting such amounts to SICT within two (2) Business Days by wire transfer to an account specified by SICT in writing.

(c) No later than the 15 days after the end of each Fiscal Year, SANDAG shall cause the Trustee to transfer to the Custodian all amounts then on deposit in the Coverage Fund, and shall describe the nature of such transfer, pursuant to Section 3.03(a)(iii) of the Toll Allocation Agreement. The Custodian shall deposit such amounts in the True-Up Fund, account for the same, and within two (2) Business Days remit such amounts to SICT by wire transfer to an account specified by SICT in writing.

de Asignación de Peajes, el Depositario deberá ajustar las distribuciones del Fondo de Ingresos Netos para dicho mes de acuerdo con dicha Instrucción de Ajuste de Asignación.

Sección 3.04 Constitución y funcionamiento del Fondo de Regularización.

(a) SANDAG y SICT por medio del presente instruyen al Depositario que establezca el Fondo de Regularización, en términos de la Sección 3.03(e) del Acuerdo de Distribución de Peaje, que el Depositario mantendrá como cuenta separada sujeta a las disposiciones del presente documento. SICT será el beneficiario de todas las cantidades depositadas en el Fondo de Regularización.

(b) Mensualmente, el primer Día Hábil de cada mes, SANDAG deberá causar que el Fiduciario transfiera al Depositario los rendimientos de las inversiones (pero no el capital) de los importes depositados en el Fondo de Cobertura atribuibles al mes anterior en virtud de la Sección 3.03(d) del Acuerdo de Distribución de Peaje. SANDAG también podrá causar que el Fiduciario transfiera al Depositario el primer Día Hábil de cualquier mes los Fondos Restantes para pagar cualquier Interés por Déficit del Fondo de Cobertura no pagado y/o cualquier Responsabilidad Acumulada por Déficit que SANDAG deba a SICT. SANDAG designará la naturaleza de todas las transferencias conforme a esta subsección (b) al Depositario y el Depositario deberá contabilizar y registrar dichos pagos según corresponda al mismo tiempo que depositará dichos importes en el Fondo de Regularización y los entregará a SICT dentro de los dos (2) Días Hábiles siguientes mediante transferencia bancaria a la cuenta que SICT indique por escrito.

(c) A más tardar 15 días después del final de cada Año Fiscal, SANDAG hará que el Fiduciario transfiera al Depositario todas las cantidades depositadas en ese momento en el Fondo de Cobertura y describirá la naturaleza de dicha transferencia de conformidad con la Sección 3.03(a)(iii) del Acuerdo de Distribución de Peaje. El Depositario depositará dichas cantidades en el Fondo de Regularización, contabilizará las mismas y remitirá dentro de los dos (2) Días Hábiles siguientes dichas cantidades a SICT mediante transferencia bancaria a una cuenta especificada por SICT por escrito.

(d) No later than 15 days after the end of any Fiscal Year during which a Shortfall Liability exists, SANDAG shall pay, or cause the Trustee to pay, solely from Remaining Funds attributable to such Fiscal Year, the amount of the Shortfall Liability (or if such Remaining Funds are insufficient to pay the Shortfall Liability in full, such lesser amount to the extent of available Remaining Funds) to the Custodian, and shall describe the nature of such transfer, pursuant to Section 3.03(c) of the Toll Allocation Agreement. The Custodian shall deposit such amount in the True-Up Fund, account for the same, and shall within two (2) Business Days remit such amount to SICT by wire transfer to an account specified by SICT in writing.

Section 3.05 Investments.

The Custodian shall invest amounts on deposit in the Toll Revenues Fund, the Net Revenues Fund and the True-Up Fund in accordance with NADBank's Investment Policy, as the same may be amended from time to time; provided, however that all such investments shall also comply with the investment policies and guidelines of SANDAG, as provided by SANDAG to NADBank in writing. The current NADBank Investment Policy is attached as Exhibit A. Accrued interest of the funds hereunder invested by NADBank, in connection to this Custodial Agreement, will be allocated at the end of each calendar month pro-rata, based on the average daily balance of each fund.

Section 3.06 Selection of Panelist.

The Custodian hereby agrees that, upon the initiation of the dispute resolution provisions of Article IV of the Toll Allocation Agreement and the establishment of a panel pursuant to Section 4.04 thereof, it shall promptly and diligently carry out its responsibility to select a panelist who shall serve as chair of such panel in accordance with the requirements of Section 4.04(b) thereof.

ARTICLE IV CONCERNING THE CUSTODIAN

(d) A más tardar 15 días después del final de cualquier Año Fiscal durante el cual exista una Responsabilidad por Déficit, SANDAG pagará, o hará que el Fiduciario pague, exclusivamente de los Ingresos Remanentes atribuibles a dicho Año Fiscal, el importe de la Responsabilidad por Déficit (o si dichos Ingresos Remanentes son insuficientes para pagar la Responsabilidad por Déficit en su totalidad, el importe menor de dichos de los Ingresos Remanentes disponibles) al Depositario, y describirá la naturaleza de dicha transferencia de conformidad con la Sección 3.03(c) del Acuerdo de Distribución de Peaje. El Depositario depositará dicho importe en el Fondo de Regularización, responderá por el mismo, y lo remitirá dentro de los dos (2) Días Hábiles siguientes a SICT mediante transferencia bancaria a una cuenta especificada por SICT por escrito.

Sección 3.05 Inversiones.

El Depositario invertirá las cantidades depositadas en la Cuenta de Ingresos por Peaje, en la Cuenta de Ingresos Netos y en el Fondo de Regularización de conformidad con la Política de Inversiones del NADBank, según la misma pueda ser modificada de tiempo en tiempo; no obstante, todas estas inversiones deberán cumplir también las políticas y directrices de inversión de SANDAG, tal y como SANDAG las comunique por escrito al NADBank. La Política de Inversión de NADBank vigente se adjunta al presente como Anexo A. Los intereses acumulados de los fondos aquí invertidos por NADBank, en relación con el presente Contrato de Depósito, serán asignados al final de cada mes calendario de manera proporcional, basados en el balance promedio diario de cada fondo.

Sección 3.06 Selección de Panelistas.

El Depositario acepta por medio del presente que, una vez iniciado un procedimiento de resolución de controversias de conformidad con lo dispuesto en el Artículo IV del Acuerdo de Distribución de Peaje y se conforme un panel de conformidad con la Sección 4.04 de dicho Acuerdo, este llevará a cabo con prontitud y diligencia su obligación de seleccionar a un panelista quien actuará como presidente de dicho panel, de conformidad con los requisitos de la Sección 4.04(b) de dicho acuerdo.

ARTÍCULO IV SOBRE EL DEPOSITARIO

Section 4.01 Levy, Attachment, Writ, or Court Order.

In the event that (i) SICT, SANDAG or the Custodian shall be served by a third party with any type of levy, attachment, writ or court order with respect to the Toll Revenues, or any portion thereof or (ii) a third party shall institute any court proceeding by which any Toll Revenues shall be required to be delivered other than in accordance with the provisions of this Custodial Agreement, the party or parties receiving such service shall promptly deliver or cause to be delivered to the other parties to this Custodial Agreement copies of all court papers, orders, documents and other materials concerning such proceedings. The Custodian shall continue pursuant to the terms and provisions of this Custodial Agreement to maintain the Toll Revenues Fund, Net Revenues Fund and True-Up Fund, and disburse and invest Toll Revenues or any portion thereof in accordance with this Custodial Agreement that may be the subject of such proceedings pending a final order of a court of competent jurisdiction permitting or directing disposition thereof.

Section 4.02 Instructions; Authority to Act.

The Custodian shall be deemed to have received proper instructions with respect to the Toll Revenues, the Toll Revenues Fund, the Net Revenues Fund, or the True-Up Fund, upon its receipt of Requisitions or other written instructions signed by SANDAG. Such instructions may be general or specific in terms. SANDAG hereby agrees that the provisions of Section 5.01(a) hereof shall apply to indemnify and hold harmless the Custodian from liability arising from any Requisition that is not in accordance with the Operations and Maintenance Budget.

Section 4.03 Limitation of Liability.

(a) The parties hereto agree that the Custodian shall be entitled to rely in good faith and act upon advice of counsel with respect to its performance hereunder as custodian and shall be without liability for any action reasonably taken in good faith pursuant to such advice.

Sección 4.01 Gravamen, Embargo, Mandato u Orden Judicial.

En caso que (i) SICT, SANDAG o el Depositario sean notificados por un tercero de cualquier tipo de gravamen, embargo, incautación, mandato u orden judicial con respecto a los Ingresos por Peaje o cualquier parte de los mismos; o (ii) un tercero inicie cualquier procedimiento judicial por el que se exija la entrega de los Ingresos por Peaje de forma distinta a lo dispuesto en el presente Contrato de Depósito, la parte o partes que reciban dicha notificación entregarán o harán que se entregue sin demora a las otras partes de este Contrato de Depósito, copias de todos los documentos judiciales, órdenes, citatorios y otros materiales relativos a dichos procedimientos. El Depositario continuará, de conformidad con los términos y disposiciones de este Contrato de Depósito, manteniendo la Cuenta de Ingresos por Peaje, la Cuenta de Ingresos Netos, y el Fondo de Regularización, y desembolsando e invirtiendo los Ingresos por Peaje, o cualquier porción de los mismos conforme a este Contrato de Depósito que puedan ser objeto de dichos procedimientos hasta que un tribunal competente dicte una orden definitiva que permita u ordene la disposición de los mismos.

Sección 4.02 Instrucciones; Facultad de actuación.

Una vez que el Depositario reciba las Solicitudes u otras instrucciones por escrito firmadas por SANDAG, se presume que el Depositario ha recibido instrucciones adecuadas con respecto a los Ingresos por Peaje, la Cuenta de Ingresos por Peaje, la Cuenta de Ingresos Netos o el Fondo de Regularización. Dichas instrucciones podrán ser generales o específicas en sus términos. SANDAG acuerda que las disposiciones de la Sección 5.01(a) del presente se aplicarán para indemnizar y eximir al Depositario de toda responsabilidad derivada de cualquier Solicitud que no se ajuste al Presupuesto de Operaciones y Mantenimiento.

Sección 4.03 Límites de responsabilidad.

(a) Con respecto a la actuación del Depositario, las Partes acuerdan que el Depositario tendrá derecho de asesorarse de buena fe y de actuar según lo asesoren y no será responsable de ninguna acción tomada razonablemente y de buena fe en virtud de dicha asesoría.

(b) The Custodian shall be responsible only for its specific functions and duties described herein. No implied duties, obligations, or responsibilities shall be read into this Custodial Agreement against, or on the part of the Custodian.

(c) The Custodian shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of its rights or powers, if the Custodian believes that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(d) The Custodian shall not be responsible for delays or failures in performance resulting from circumstances beyond its reasonable control (such circumstances include, but are not limited to acts of God, strikes, lockouts, riots, acts of war and loss or malfunction of utilities, computer (hardware or software) or communication services).

Section 4.04 Examination of Books and Records.

Upon reasonable prior written notice to the Custodian (but no less than five (5) Business Days), SICT and SANDAG (each at its own expense) and their respective authorized representatives will be permitted to examine the documents, books and records and other papers and electronic files and data in the possession, or under the control, of the Custodian related to the Custodian's duties under this Custodial Agreement during the Custodian's normal business hours.

Section 4.05 Account Statements.

The Custodian shall provide to SICT, and SANDAG monthly detailed account statements for the Toll Revenues Fund, the Net Revenues Fund, and the True-Up Fund showing all deposits, transfers, investments and earnings, and shall further provide such additional information regarding the Toll Revenues Fund and the Net Revenues Fund as SICT or SANDAG may reasonably request.

NADBank shall send an acknowledgement within one (1) Business Day for each receipt or disbursement of

(b) El Depositario será responsable únicamente de las funciones y obligaciones aquí descritas. Ninguna obligación o responsabilidad implícita en este Contrato de Depósito, se entenderá en contra o por parte del Depositario.

(c) El Depositario no estará obligado a gastar o arriesgar sus propios fondos o que incurra en responsabilidad financiera en el desempeño de cualquiera de sus obligaciones en virtud del presente documento, o en el ejercicio de sus derechos o poderes conforme al mismo, si el Depositario considera que no tiene razonablemente garantizado el reembolso de dichos fondos o una indemnización adecuada contra dicho riesgo o responsabilidad.

(d) El Depositario no será responsable de los retrasos o fallas en el ejercicio de sus funciones que sean resultado de circunstancias fuera de su control razonable (tales circunstancias incluyen, pero no se limitan a casos fortuitos, huelgas, cierres patronales, disturbios, actos de guerra y pérdida o mal funcionamiento de los servicios públicos, informáticos (hardware o software) o de comunicación).

Sección 4.04 Inspección de libros y registros.

Previo aviso por escrito razonable al Depositario (pero con al menos cinco (5) Días Hábiles de anticipación), SICT y SANDAG (cada uno a sus expensas) y sus respectivos representantes autorizados podrán examinar los documentos, libros y registros y cualesquier otra documentación, archivos electrónicos y datos en posesión, o bajo el control, del Depositario relacionados con los deberes del Depositario bajo este Contrato de Depósito durante las horas de oficina habituales del Depositario.

Sección 4.05 Estados de cuenta.

El Depositario proporcionará mensualmente a SICT, y a SANDAG estados de cuenta detallados de la Cuenta de Ingresos por Peaje, la Cuenta de Ingresos Netos y el Fondo de Regularización, mostrando todos los depósitos, transferencias, inversiones y ganancias, y proporcionará además cualquier información adicional que SICT, o SANDAG puedan solicitar razonablemente respecto a la Cuenta de Ingresos por Peaje y a la Cuenta de Ingresos Netos.

NADBank deberá de enviar una confirmación dentro de un (1) Día Hábil por cada recepción o desembolso de

funds (as appropriate) into or out of any NADBank fund subject to this Agreement.

Section 4.06 Audits.

The Custodian hereby agrees to allow SICT and/or SANDAG, at their/its sole expense, to audit from time to time the Custodian's receipt of Toll Revenues, earnings on investments in the Toll Revenues Fund, the Custodian's disbursement of Toll Revenues from the Toll Revenues Fund to pay Operation and Maintenance Expenses, the Custodian's transfer of Net Revenues to the Net Revenues Fund, earnings on investments in the Net Revenues Fund, the allocation of Net Revenues to SICT and SANDAG, the receipt and disbursement of moneys in the True-Up Fund and any related matters hereunder.

Section 4.07 Removal and Resignation of the Custodian.

(a) The Custodian may, at any time, resign its obligations under this Custodial Agreement upon at least one hundred eighty (180) days' prior written notice to SICT and SANDAG; provided that the Custodian shall not resign until a successor custodian has been appointed and accepted such appointment under this Custodial Agreement. Promptly after receipt of notice of the Custodian's resignation, SICT and SANDAG jointly may appoint, by written instrument, a successor custodian, subject to written approval by the Trustee and the TIFIA Lender) (which approval shall not be unreasonably withheld or delayed). If no successor custodian is so appointed within one hundred eighty (180) days of such notice, the Custodian may petition any court of competent jurisdiction to appoint a successor custodian; provided that the Custodian shall not resign until the court has appointed a successor custodian and such successor custodian has accepted such appointment. One original counterpart of such instrument of appointment shall be delivered to each of SICT, SANDAG, the Custodian and the successor custodian.

(b) SICT and SANDAG jointly, upon at least sixty (60) days' prior written notice to the Custodian, may

fondos (según corresponda) desde o hacia cualquier fondo de NADBank que esté sujeto al presente Contrato.

Sección 4.06 Auditorías.

Mediante el presente Contrato, el Depositario acuerda permitir a SICT y/o a SANDAG, bajo su/sus propio/propios cargo/cargos y costo, auditar de vez en cuando el depósito de los Ingresos por Peaje por parte del Depositario, las ganancias de las inversiones en la Cuenta de Ingresos por Peaje, el desembolso por parte del Depositario de Ingresos por Peaje de la Cuenta de Ingresos por Peaje para pagar los Gastos de Operación y Mantenimiento, la transferencia por parte del Depositario de los Ingresos Netos a la Cuenta de Ingresos Netos, las ganancias de las inversiones en la Cuenta de Ingresos Netos, la asignación de Ingresos Netos a SICT y SANDAG, la recepción y distribución de los fondos en el Fondo de Regularización y cualquier otro asunto relacionado con el presente.

Sección 4.07 Destitución y renuncia del Depositario.

(a) El Depositario podrá, en cualquier momento, renunciar a sus obligaciones en virtud del presente Contrato de Depósito, previa notificación por escrito a SICT, y SANDAG con un mínimo de ciento ochenta (180) días de antelación; siempre que el Depositario no renuncie hasta que se haya nombrado y aceptado el nombramiento de un custodio sucesor en virtud del presente Contrato de Depósito. Inmediatamente después de la recepción de la notificación de renuncia del Depositario, SICT, y SANDAG podrán designar conjuntamente, mediante instrumento escrito, a un Depositario sucesor, previa aprobación por escrito del Fiduciario y del Acreedor TIFIA (aprobación que no se denegará ni retrasará injustificadamente). Si no se nombra a un custodio sucesor en el plazo de ciento ochenta (180) días a partir de dicha notificación, el Depositario podrá solicitar a cualquier tribunal competente que nombre a un depositario sucesor; entendiendo que el Depositario no podrá renunciar hasta que el tribunal haya nombrado a un depositario sucesor y dicho depositario sucesor haya aceptado dicho encargo. Se entregará un original de dicho instrumento de nombramiento a SICT, SANDAG, al Depositario y al custodio sucesor.

(b) SICT, y SANDAG conjuntamente, previa notificación por escrito al Depositario con al menos

remove and discharge the Custodian (or any successor custodian thereafter appointed) from the performance of its obligations under this Custodial Agreement. Promptly after the giving of notice of removal of the Custodian, SICT and SANDAG jointly, shall appoint, by written instrument, a successor custodian. If no successor custodian is so approved within sixty (60) days of such notice, the Custodian may petition any court of competent jurisdiction to appoint a successor custodian under this Custodial Agreement. One original counterpart of such instrument of appointment shall be delivered to each of the SICT, SANDAG, the Custodian and the successor custodian. No removal of the Custodian shall be effective until a successor custodian shall have been appointed and accepted such appointment.

(c) Periodically as agreed by the Parties, and at least every five years, SICT and SANDAG shall conduct a formal evaluation of the Custodian's performance under this Custodial Agreement, and on the basis of such evaluation may jointly initiate the removal and discharge of the Custodian pursuant to Section 4.07(b) above. At the conclusion of any such formal evaluation, the Custodian may initiate the process to resign its obligations under this Custodial Agreement pursuant to Section 4.07(a) above.

Section 4.08 No Adverse Interest of the Custodian.

By execution of this Custodial Agreement, the Custodian represents and warrants that it currently holds, and during the term of this Custodial Agreement shall hold, no adverse interest, by way of security or otherwise, in the Toll Revenues, or any portion thereof, and hereby waives and releases any such interest which it may have in the Toll Revenues or any portion thereof. None of the Toll Revenues, or any portion thereof shall be subject to any security interest, lien or right to set-off by the Custodian or any third party claiming through the Custodian, and the Custodian shall not pledge, encumber, hypothecate, transfer, dispose of, or otherwise grant any third party interest in, the Toll Revenues.

sesenta (60) días de antelación, podrán destituir y liberar al Depositario (o a cualquier Depositario sustituto designado posteriormente) del cumplimiento de sus obligaciones en virtud del presente Contrato de Depósito. Inmediatamente después de la notificación de destitución del Depositario, SICT, y SANDAG designarán conjuntamente, mediante instrumento escrito, un Depositario sustituto. Si no se aprueba a ningún Depositario sustituto en el plazo de sesenta (60) días a partir de dicha notificación, el Depositario podrá solicitar a cualquier tribunal de jurisdicción competente que nombre a un Depositario sustituto en virtud del presente Contrato de Depósito. Se entregará un original de dicho instrumento de nombramiento al SICT, a SANDAG, al Depositario y al Depositario sustituto. La destitución del Depositario no será efectiva hasta que se haya nombrado y aceptado el nombramiento de un Depositario sustituto.

(c) Periódicamente según lo acordado por las Partes, y al menos cada cinco años, SICT y SANDAG llevarán a cabo una evaluación formal del desempeño del Depositario bajo este Contrato de Depósito, y sobre la base de dicha evaluación podrán iniciar conjuntamente la remoción y despido del Depositario de conformidad con la Sección 4.07(b) anterior. Al término de dicha evaluación formal, el Depositario podrá iniciar el proceso de renuncia a sus obligaciones en virtud del presente Contrato de Depósito de conformidad con la Sección 4.07(a) anterior.

Sección 4.08 Ausencia de Interés Adverso del Depositario.

Mediante la firma de este Contrato de Depósito, el Depositario declara y garantiza que actualmente no tiene, y que durante la vigencia de este Contrato de Depósito no tendrá, ningún interés adverso, garantía o similar, sobre los Ingresos por Peaje o cualquier parte de los mismos, y por medio del presente renuncia y libera cualquier interés de este tipo que pueda tener sobre los Ingresos por Peaje o cualquier parte de los mismos. Ninguno de los Ingresos por Peaje o cualquier parte de los mismos estará sujeto a ninguna garantía, gravamen o derecho de compensación por parte del Depositario o de cualquier tercero que reclame a través del Depositario, y el Depositario no pignoraré, gravará, hipotecará, transferirá, dispondrá de, ni otorgará de ningún otro modo interés a terceros sobre los Ingresos por Peaje.

Section 4.09 Compensation of the Custodian.

SANDAG shall compensate the Custodian for its services hereunder in accordance with the Operation and Maintenance Expenses Budget, which shall provide for compensation outlined in Exhibit B attached hereto. Such compensation shall be adjusted annually as described in Exhibit B. In addition, SANDAG, shall reimburse the Custodian for all of its reasonable out-of-pocket expenses, disbursements, and advances, which are preapproved and incorporated into the Operation and Maintenance Expenses Budget, including without limitation the reasonable fees, expenses, and disbursements of its agents and attorneys incurred or made by the Custodian in connection with entering into and performing under this Custodial Agreement or in connection with investigating and defending itself against any claim or liability in connection with its performance hereunder. The additional provisions and information set forth on Exhibit B are hereby incorporated by this reference and form a part of this Custodial Agreement. The obligations of SANDAG under this Section 4.09 shall survive any termination of this Custodial Agreement and the resignation or removal of the Custodian.

ARTICLE V INDEMNIFICATION

Section 5.01 Indemnification by SANDAG and NADBank.

(a) SANDAG agrees to indemnify, defend and hold the Custodian and its directors, officers, agents and employees harmless against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever, including reasonable attorneys' fees, that may be imposed on, incurred by, or asserted against it or them by third parties in any way relating to or arising out of this Custodial Agreement or any action taken or not taken by it or them hereunder including, but not limited to, the costs of defending any claim or bringing any claim to enforce the indemnification obligations of SANDAG, unless such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements (other than special, indirect, punitive or consequential damages, which shall in no event be paid by SANDAG) were imposed on, incurred by or asserted against the Custodian because of the breach by the

Sección 4.09 Honorarios del Depositario.

SANDAG pagará al Depositario por sus servicios los honorarios de acuerdo al Presupuesto de Gastos de Operación y Mantenimiento, que proporcionará una compensación detallada prevista en el Anexo B adjunto al presente. Dicha compensación se ajustará anualmente de conformidad con lo descrito en el Anexo B. Además, SANDAG reembolsará al Depositario todos sus gastos, desembolsos y anticipos razonables, los cuales son preaprobados e incorporados en el Presupuesto de Gastos de Operación y Mantenimiento, incluyendo, entre otros, los honorarios, gastos y desembolsos razonables de sus agentes y asesores legales incurridos o realizados por el Depositario en relación con la suscripción y el cumplimiento de este Contrato de Depósito o en relación con la investigación y defensa contra cualquier reclamación o responsabilidad derivada de su desempeño en virtud del presente. Las disposiciones adicionales y la información que figuran en el Anexo B se incorporan como referencia y forman parte del presente Contrato de Depósito. Las obligaciones de SANDAG en virtud de esta Sección 4.09 sobrevivirán a la terminación de este Contrato de Depósito y a la renuncia o destitución del Depositario.

ARTICULO V INDEMNIZACIÓN

Sección 5.01 Indemnización por SANDAG y NADBank.

(a) SANDAG acuerda indemnizar, defender y eximir al Depositario y a sus directores, funcionarios, agentes y trabajadores de toda responsabilidad, obligación, pérdida, daño, sanción, acción, juicio, demanda, costo, gasto o desembolso de cualquier tipo o naturaleza, incluyendo los honorarios razonables de sus asesores legales, que puedan imponerse, incurrirse o hacerse valer en su contra, de cualquier modo en relación con este Contrato de Depósito o con cualquier acción emprendida o no emprendida por ella o ellos en virtud del mismo, incluyendo, de manera meramente enunciativo y no limitativo, los costos de defender cualquier reclamación o interponer cualquier demanda para hacer cumplir las obligaciones de indemnización de SANDAG, a menos que dichas responsabilidades, obligaciones, pérdidas, daños, sanciones, acciones, juicios, demandas, costos, gastos o desembolsos (que no sean daños especiales, indirectos, punitivos o consecuentes, que en ningún caso serán pagados por

Custodian of its obligations hereunder, which breach was caused by negligence, lack of good faith or willful misconduct on the part of the Custodian or any of its directors, officers, agents or employees. The foregoing indemnification shall survive any resignation or removal of the Custodian or the termination or assignment of this Custodial Agreement.

(b) The Custodian agrees to indemnify, defend, and hold SANDAG and its directors, officers, agents and employees, harmless against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever, including reasonable attorneys' fees, that may be imposed on, incurred by, or asserted against it or them by third parties in any way relating to or arising out of the Custodian's negligence, lack of good faith or willful misconduct, including, but not limited to, the costs of defending any claim or bringing any claim to enforce the indemnification obligations of the Custodian. In no event shall the Custodian be liable for any special, indirect, punitive or consequential damages. The foregoing indemnification shall survive any termination or assignment of this Custodial Agreement.

Section 5.02 Indemnification by SICT and NADBank.

(a) SICT agrees to indemnify, defend and hold the Custodian and its directors, officers, agents and employees harmless against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever, including reasonable attorneys' fees, that may be imposed on, incurred by, or asserted against it or them by third parties in any way relating to or arising out of this Custodial Agreement or any action taken or not taken by it or them hereunder including, but not limited to, the costs of defending any claim or bringing any claim to enforce the indemnification obligations of SICT, unless such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements (other than special, indirect, punitive or consequential damages, which shall in no event be paid by SICT) were imposed on, incurred by or asserted against the Custodian because of the breach by the

SANDAG) se impusieron, incurrieron o hicieron valer contra el Depositario debido al incumplimiento por parte del Depositario de sus obligaciones en virtud del presente, incumplimiento que fue causado por negligencia, falta de buena fe o mala conducta intencional por parte del Depositario o cualquiera de sus directores, funcionarios, agentes o Trabajadores. La indemnización anterior subsistirá tras la dimisión o destitución del Depositario o la terminación o cesión del presente Contrato de Depósito.

(b) El Depositario acuerda indemnizar, defender y eximir de responsabilidad a SANDAG y sus directores, oficiales, agentes y empleados, contra cualquier responsabilidad, obligación, pérdida, daño, penalización, acción, sentencia, demanda, coste, gasto o desembolso de cualquier tipo o naturaleza, incluidos los honorarios razonables de asesores legales, que puedan imponerse, incurridos por, o afirmados en contra de él o ellos de cualquier manera relacionados con o derivados de la negligencia, falta de buena fe o mala conducta intencional del Depositario, incluyendo, pero no limitado a, los costos de defender cualquier reclamo o presentar cualquier reclamo para hacer cumplir las obligaciones de indemnización del Depositario. En ningún caso el Depositario será responsable de daños especiales, indirectos, punitivos o perjuicios. La indemnización anterior sobrevivirá a cualquier

Sección 5.02 Indemnización por SICT y NADBank.

(a) SICT se compromete a indemnizar, defender y eximir al Depositario y a sus directores, funcionarios, agentes y empleados de toda responsabilidad, obligación, pérdida, daño, sanción, acción, sentencia, pleito, coste, o gasto de cualquier tipo o naturaleza, incluidos los honorarios razonables de abogados, que puedan imponerse, incurrirse o hacerse valer contra ella o ellos por parte de terceros en cualquier forma relacionada con o derivada de este Contrato de Depósito o de cualquier acción emprendida o no emprendida por ella o ellos en virtud del mismo, incluidos, entre otros, los costes de defensa de cualquier reclamación o de interposición de cualquier demanda para hacer cumplir las obligaciones de indemnización de SICT, a menos que dichas responsabilidades, obligaciones, pérdidas, daños, sanciones, acciones, sentencias, pleitos, costes o gastos (que no sean daños especiales, indirectos, punitivos o consecuentes, que en ningún caso serán pagados por

Custodian of its obligations hereunder, which breach was caused by negligence, lack of good faith or willful misconduct on the part of the Custodian or any of its directors, officers, agents or employees. The foregoing indemnification shall survive any resignation or removal of the Custodian or the termination or assignment of this Custodial Agreement.

(b) The Custodian agrees to indemnify, defend, and hold SICT and its directors, officers, agents and employees, harmless against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever, including reasonable attorneys' fees, that may be imposed on, incurred by, or asserted against it or them by third parties in any way relating to or arising out of the Custodian's negligence, lack of good faith or willful misconduct, including, but not limited to, the costs of defending any claim or bringing any claim to enforce the indemnification obligations of the Custodian. In no event shall the Custodian be liable for any special, indirect, punitive or consequential damages. The foregoing indemnification shall survive any termination or assignment of this Custodial Agreement.

Section 5.03 Third Parties.

For the avoidance of doubt, SANDAG, SICT and the Custodian hereby acknowledge and agree that the reference to "third parties" in this Article V shall expressly exclude SANDAG, SICT and the Custodian, and any of their respective directors, officers, agents, employees, affiliates, departments, divisions, ministries, bureaus, boards, commissions or other constituent components of any kind.

ARTICLE VI DISPUTE RESOLUTION PROVISIONS WITH RESPECT TO SICT

Section 6.01 Scope.

(a) The Parties shall at all times endeavor to agree on the interpretation and application of this Custodial Agreement and shall make every attempt through

SICT) se impusieron, incurrieron o hicieron valer contra el Depositario debido al incumplimiento por parte del Depositario de sus obligaciones en virtud del presente documento, incumplimiento que fue causado por negligencia, falta de buena fe o dolo por parte del Depositario o de cualquiera de sus directores, funcionarios, agentes o empleados. La anterior indemnización subsistirá tras la rescisión o destitución del Depositario o la resolución o cesión del presente Contrato de Depósito.

(b) El Depositario se compromete a indemnizar, defender y eximir a SICT y a sus directores, oficiales, agentes y empleados, de toda responsabilidad, obligación, pérdida, daño, sanción, acción, sentencia, pleito, coste, gasto o reembolso de cualquier tipo o naturaleza, incluidos los honorarios razonables de abogados, que puedan imponérsele, en que incurra o que terceros hagan valer contra él o contra ellos de cualquier modo en relación con o como consecuencia de la negligencia, falta de buena fe o dolo del Depositario, incluidos, de manera enunciativa y no limitativa, los costes de defensa de cualquier reclamación o de interposición de cualquier demanda para hacer cumplir las obligaciones de indemnización del Depositario. En ningún caso el Depositario será responsable de daños especiales, indirectos, punitivos o consecuentes. La indemnización anterior subsistirá después de cualquier rescisión o cesión del presente Contrato de Depósito.

Sección 5.03 Terceros.

Para evitar cualquier duda, SANDAG, SICT y el Depositario reconocen y acuerdan por la presente que la referencia a "terceros" en el presente artículo V excluye expresamente a SANDAG, SICT y el Depositario, así como a cualquiera de sus respectivos directores, funcionarios, agentes, empleados, afiliados, departamentos, divisiones, ministerios, oficinas, juntas, comisiones u otros componentes constituyentes de cualquier tipo.

ARTÍCULO VI DISPOSICIONES DE SOLUCIÓN DE CONTROVERSIAS EN MATERIA DE SICT

Sección 6.01 Ámbito de aplicación.

(a) Las Partes se esforzarán en todo momento por llegar a un acuerdo sobre la interpretación y aplicación del presente Contrato de Depósito y harán todo lo

cooperation and consultations to arrive at a mutually satisfactory resolution of a matter that might affect its operation or application.

(b) The dispute settlement provisions of this Article VI shall apply (i) with respect to the avoidance or settlement of disputes involving SICT, SANDAG and the Custodian) regarding the interpretation or application of this Custodial Agreement or (ii) when SANDAG considers that an actual or proposed action of SICT, or when SICT considers that an actual or proposed action of SANDAG, would be inconsistent with an obligation of this Custodial Agreement or that an actual or proposed inaction would constitute failure to carry out an obligation of this Custodial Agreement.

(c) The dispute settlement provisions of this Article VI shall not apply to any dispute hereunder solely between the Custodian and SANDAG or the Custodian and SICT.

(d) In the event of a dispute between SICT and the Custodian, both the Custodian and SICT agree to submit the dispute to a mediation process through which the two will seek to reach an agreement for the resolution of the dispute which: (i) may be initiated by either SICT and the Custodian and (ii) must be resolved within 30 (thirty) calendar days following the request for such mediation, through a single mediation meeting and from which the parties will draft a report. In the event of not reaching an agreement in such mediation, both the Custodian and SICT agree to submit the dispute to the jurisdiction of the federal courts of Mexico City, where Mexican law shall be applicable to settle the dispute.

Section 6.02 Consultations.

(a) The Parties may request consultations with respect to any matter described in paragraph (b) Section 6.01 above. Such request shall be in writing, and shall set out the reasons for the request, including identification of the specific action, inaction or other matter at issue and an indication of the legal basis for the complaint. Unless the Parties decide otherwise, they shall enter into consultations no later than fifteen (15) Business Days after the date of delivery of the request therefor.

posible mediante la cooperación y las consultas para llegar a una resolución mutuamente satisfactoria de un asunto que pueda afectar a su funcionamiento o aplicación.

(b) Las disposiciones sobre solución de controversias del presente artículo VI se aplicarán (i) con respecto a la prevención o solución de controversias que impliquen a SICT, SANDAG, y el Depositario en relación con la interpretación o aplicación del presente Contrato de Depósito o (ii) cuando SANDAG considere que una acción real o propuesta de SICT, o cuando SICT considere que una acción real o propuesta de SANDAG, sería incompatible con una obligación de este Contrato de Depósito o que una inacción real o propuesta constituiría un incumplimiento de una obligación de este Contrato de Depósito.

(c) Las disposiciones sobre resolución de controversias del presente artículo VI no se aplicarán a ninguna controversia entre únicamente el Depositario y SANDAG o entre el Depositario y SICT.

(d) En caso de controversia entre SICT y el Depositario, tanto el Depositario como SICT acuerdan someter la controversia a un proceso de mediación en el cual buscarán alcanzar un acuerdo para resolver la controversia, que: (i) puede ser iniciado tanto por SICT como por el Depositario y (ii) debe resolverse dentro de los 30 (treinta) días calendario siguientes a la solicitud de mediación, mediante una única reunión de mediación de la cual se redactará un informe. En caso de no llegar a un acuerdo en tal mediación, tanto el Depositario como SICT acuerdan someter la controversia a la jurisdicción de los tribunales federales de la Ciudad de México, donde la ley mexicana será aplicable para resolver la controversia.

Sección 6.02 Consultas.

(a) Las Partes podrán solicitar consultas con respecto a cualquier asunto descrito en el párrafo (b) de la Sección 6.01 anterior. Dicha solicitud se hará por escrito y expondrá los motivos de la solicitud, incluyendo identificación de la acción, inacción u otro asunto específico en cuestión y una indicación del fundamento jurídico de la reclamación. A menos que las Partes decidan lo contrario, iniciarán consultas a más tardar quince (15) Días Hábiles después de la fecha de entrega de la solicitud correspondiente.

(b) The Parties shall make every attempt to arrive at a mutually satisfactory resolution of a matter through consultations under this Section 6.02. To this end: (i) the Party requesting consultations shall provide sufficient information to enable a full examination of how the actual or proposed action, inaction or other matter at issue might affect the operation of application of this Custodial Agreement; (ii) all participants in such consultations shall treat the information exchanged in the course of consultations that is designated as confidential on the same basis as the Party providing the information; and (iii) the Parties shall seek to avoid a resolution that adversely affects the interests of the other under this Custodial Agreement.

Section 6.03 Alternative Dispute Resolution.

The Parties may initiate at any time to voluntarily undertake an alternative method of dispute resolution, such as good offices, conciliation or mediation. Proceedings that involve good offices, conciliation or mediation shall be confidential and without prejudice to the rights of the Parties in another proceeding. Any Party proceeding under this Section 6.03 may suspend or terminate those proceedings. If the Parties so decide, good offices, conciliation or mediation may continue while a dispute proceeds for resolution before a panel established under Section 6.04.

Section 6.04 Establishment of Panel.

(a) If the Parties fail to resolve the matter within thirty (30) Business Days after the date of delivery of the request for consultations described in paragraph (a) of Section 6.02 hereof, or such other period as the Parties may decide, then either Party may request the establishment of a panel by means of a written notice delivered to the other, and shall include in such request an identification of the measure or other matter at issue and a brief summary of the legal basis of the complaint sufficient to present the issue clearly. Upon delivery of such request, a panel shall be established to be composed of the panelists described in paragraph (b) of Section 6.04 below.

(b) Las Partes harán todo lo posible por llegar a una solución mutuamente satisfactoria de un asunto a través de consultas conforme a esta Sección 6.02. Con este fin: (i) la Parte que solicite las consultas proporcionará información suficiente para permitir un examen completo de la forma en que la acción, inacción u otro asunto en cuestión, real o propuesto, podría afectar la operación o aplicación de este Contrato de Depósito; (ii) todos los participantes en tales consultas tratarán la información intercambiada en el curso de las consultas que sea designada como confidencial sobre la misma base que la Parte que proporciona la información; y (iii) las Partes procurarán evitar una resolución que afecte adversamente los intereses de la otra en virtud de este Contrato de Depósito.

Sección 6.03 Medios alternativos de resolución de controversias.

Las Partes podrán iniciar en cualquier momento, de manera voluntaria, un método alternativo de solución de controversias, como los buenos oficios, la conciliación o la mediación. Los procedimientos que involucren buenos oficios, conciliación o mediación serán confidenciales y sin perjuicio de los derechos de las Partes en otro procedimiento. De conformidad con esta Sección 6.03, las Partes pueden suspender o dar por terminados dichos procedimientos. Si las Partes así lo deciden, los buenos oficios, la conciliación o la mediación pueden continuar mientras una controversia se encuentre en proceso de solución ante un panel conformado en los términos de la Sección 6.04.

Sección 6.04 Establecimiento del Panel.

(a) Si las Partes no resuelven el asunto dentro de los treinta (30) Días Hábiles siguientes a la fecha de entrega de la solicitud de consultas descrita en la Sección 6.02, inciso (a) precedente, o dentro de cualquier otro plazo que las Partes decidan, entonces cualquiera de las Partes podrá solicitar el establecimiento de un panel, mediante notificación escrita entregada a la otra Parte, e incluirá en dicha solicitud una identificación de la medida u otro asunto en cuestión, así como un breve resumen de los fundamentos jurídicos de la controversia, que se consideren suficientes para presentar el problema con claridad. Tras la entrega de dicha solicitud, se establecerá un panel compuesto por los panelistas descritos en la Sección 6.04, inciso (b) a continuación.

(b) The panel shall comprise three members. One panelist shall be selected by SICT, one panelist shall be selected by SANDAG and one panelist shall be selected by the Custodian. Each panelist shall be selected on the basis of objectivity, reliability and sound judgment. The panelist selected by the Party not directly involved in the dispute shall chair the panel; if, however, both the Custodian and SANDAG are directly involved in the dispute with SICT then the chair of the panel shall be selected at random.

(c) If a panelist resigns, is removed or becomes unable to serve, the time frames applicable to the panel's proceedings shall be suspended until a replacement is appointed and shall be extended by the amount of time that the work was suspended. Such appointment shall be made within the following fifteen (15) Business Days in accordance with the method used to select such panelist pursuant to paragraph (b) of Section 6.04 hereof.

Section 6.05 Panel Proceedings; Panel Report.

(a) The Parties shall have the right to at least one hearing before the panel at which each Party may present views orally, and each may provide an initial and a rebuttal written submission. The panel shall protect the confidentiality of information designated as confidential. Written submissions and oral arguments shall be made in one of the languages of the Parties, unless the Parties decide otherwise.

(b) The panel's function shall be to make an objective assessment of the matter before it and to present a report that contains (i) findings of fact, (ii) determinations as to whether the action, inaction or other matter at issue is inconsistent with the obligations in this Custodial Agreement or whether any Party has otherwise failed to carry out its obligations in this Custodial Agreement, (iii) recommendations for the resolution of the dispute and (iv) the reasons for the findings and determinations.

(c) The panel shall interpret this Custodial Agreement in accordance with customary rules of interpretation of public international law. Panel determination shall be unanimous, except that if the

(b) El panel estará integrado por tres miembros. Un panelista será seleccionado por la SICT, un panelista será seleccionado por SANDAG y un panelista será seleccionado por el Depositario de conformidad con el Contrato de Depósito. Cada panelista será seleccionado sobre la base de su objetividad, confiabilidad y buen juicio. El panelista seleccionado por la Parte no directamente involucrada en la disputa presidirá el panel; sin embargo, si tanto el Depositario como SANDAG están directamente involucrados en la disputa con SICT, el presidente del panel será seleccionado al azar.

(c) Si un panelista renuncia, es destituido o está imposibilitado de prestar sus servicios, los plazos aplicables a los procedimientos se suspenderán hasta que se nombre un reemplazo y se prorrogarán por el tiempo que estuvo suspendido el procedimiento. Dicho nombramiento deberá hacerse en los quince (15) Días Hábiles siguientes, con el método usado para seleccionar dicho panelista de conformidad con la Sección 6.04, inciso (b) del presente Contrato.

Sección 6.05 Procedimientos del Panel, Informe del Panel.

(a) Las Partes tendrán el derecho de al menos una audiencia ante el panel en donde las Partes podrán presentar sus puntos de vista de forma verbal, y cada una podrá presentar un escrito inicial y una réplica. El panel protegerá la confidencialidad de la información clasificada como confidencial. Los escritos y los argumentos orales se realizarán en uno de los idiomas de las Partes, salvo decisión en contrario de las Partes.

(b) La función del panel es evaluar objetivamente el asunto en cuestión y presentar un informe que contenga (i) determinaciones de hecho, (ii) determinaciones sobre si la acción, omisión u otro asunto relevante es inconsistente con las obligaciones previstas en el presente Contrato de Depósito o si las Partes han incumplido de alguna manera sus obligaciones de conformidad con el presente Contrato de Depósito, (iii) recomendaciones para la solución de la controversia y (iv) las razones de los hallazgos y determinaciones.

(c) El panel interpretará el presente Contrato de Depósito de conformidad con las reglas consuetudinarias de interpretación de derecho internacional público. Las determinaciones del panel deberán ser unánimes, salvo cuando no se pueda llegar

panel is unable to reach consensus, it may take its decision by majority vote.

(d) The panel shall present an initial report no later than sixty (60) Business Days after the date of the appointment of the last panelist. The Parties may submit written comment to the panel on its initial report no later than fifteen (15) Business Days after the presentation of the initial report or within another period as the Parties may decide. After considering such comments, the panel, on its own initiative or at the request of any Party, may (i) request the views of any other Party, (ii) reconsider its report or (iii) make such further examination as it considers appropriate. The panel shall present a final report no later than thirty (30) Business Days after presentation of the initial report, unless the Parties decide otherwise.

(e) Within thirty (30) Business Days from receipt of a final report that contains findings that (i) the action, inaction or other measure at issue is inconsistent with the obligations of any Party under this Custodial Agreement, or (ii) any Party has otherwise failed to carry out its obligations under this Custodial Agreement, the Parties shall endeavor to agree on the resolution of the dispute.

ARTICLE VII MISCELLANEOUS

Section 7.01 Effective Period, Termination and Amendment.

This Custodial Agreement shall become effective on the date of execution and delivery by all Parties, and shall continue in full force and effect until the termination of the Toll Allocation Agreement. This Custodial Agreement may be amended only by mutual agreement of the Parties in writing.

Section 7.02 Applicable Law.

This Custodial Agreement shall be interpreted consistent with all applicable laws, and action taken hereunder shall be subject to, and shall be performed in accordance with, all applicable laws. The respective obligations of the Custodian and SANDAG under this Custodial Agreement shall be governed by the laws of the State of California, and the obligations of SICT

a un consenso, la decisión se tomará por mayoría de votos.

(d) El panel presentará un informe inicial a más tardar sesenta (60) Días Hábiles posteriores a la fecha de designación del último panelista. Las Partes podrán presentar comentarios por escrito al panel sobre su informe inicial a más tardar quince (15) Días Hábiles después de la presentación del informe inicial o dentro de otro plazo que las Partes decidan. Después de considerar dichos comentarios, el panel, por iniciativa propia o a solicitud de alguna de las Partes, podrá (i) solicitar las opiniones de la otra Parte, (ii) reconsiderar su informe o (iii) realizar una investigación más a profundidad, según lo considere pertinente. El panel presentará un informe final a más tardar treinta (30) Días Hábiles después de la presentación del informe inicial, a menos que las Partes decidan lo contrario.

(e) Dentro de los treinta (30) Días Hábiles siguientes a la recepción del informe final que contenga la determinación sobre (i) la acción, omisión u otra medida incompatible con las obligaciones de las Partes de conformidad con el presente Contrato de Depósito, o (ii) alguna de las Partes incumpla con sus obligaciones previstas en el presente Contrato, las Partes se esforzarán por alcanzar un acuerdo sobre la solución de la controversia.

ARTÍCULO VII MISCELÁNEOS

Sección 7.01 Vigencia, terminación y modificación.

El presente Contrato de Depósito entrará en vigor en la fecha de firma y celebración por todas las Partes, y continuará en pleno vigor y efecto hasta la terminación del Acuerdo de Distribución de Peaje. El presente Contrato de Depósito sólo podrá ser modificado por acuerdo mutuo de las partes por escrito.

Sección 7.02 Ley Aplicable.

El presente Contrato de Depósito se interpretará de conformidad con todas las leyes aplicables, y las acciones que se adopten en virtud del mismo estarán sujetas y se ejecutarán de conformidad con todas las leyes aplicables. Las obligaciones de SANDAG y el Depositario conforme al presente Contrato de Depósito, según corresponda, se regirán por las leyes del Estado de California, y las obligaciones de la SICT,

under this Custodial Agreement shall be governed by the laws of the United Mexican States.

Section 7.03 Notices.

All demands, notices and communications hereunder shall be in writing, delivered or mailed, and shall be deemed to have been duly given upon receipt (a) in the case of the Custodian, at the following address: _____, (b) in the case of SICT, at the following address: Insurgentes Sur number 1089, ground floor, Colonia Noche Buena, Alcaldía Benito Juárez, Zip Code 03720, in Mexico City, and (c) in the case of SANDAG, at the following address: 401 B Street, Suite 800, Attention: Chief Executive Officer, San Diego, California 92101, or at such other address as shall be designated by such Party in a written notice to the other Parties.

Section 7.04 Waiver of Immunities.

To the extent permitted by applicable law, each of the parties hereto agrees that it will not assert any immunity (and hereby waives any such immunity) that it may have as a governmental or quasi-governmental entity from lawsuits, other actions and claims and any judgments with respect to the enforcement of its obligations under this Custodial Agreement by any of the Parties.

Section 7.05 Counterparts.

This Custodial Agreement shall be executed simultaneously in three (3) original counterparts, each one in both English and Spanish, which shall all be deemed authentic and all of which taken together shall constitute one and the same instrument.

Section 7.06 Headings.

The title and Section headings are not part of this Custodial Agreement and shall not be used in its interpretation.

Section 7.07 Assignment.

No Party to this Custodial Agreement may assign its rights or delegate its obligations under this Custodial Agreement without the express written consent of the

se regirán por las leyes de los Estados Unidos Mexicanos.

Sección 7.03 Notificaciones.

Todas las demandas, notificaciones y comunicaciones en virtud del presente documento se harán por escrito, se entregarán o se enviarán por correo, y se considerarán debidamente entregadas en el momento de su recepción (a) en el caso del Depositario, en la siguiente dirección: _____, (b) en el caso de SICT, en la siguiente dirección: Insurgentes Sur número 1089, planta baja, Colonia Noche Buena, Alcaldía Benito Juárez, Código Postal 03720, en la Ciudad de México, (c) en el caso de SANDAG, en la siguiente dirección: 401 B Street, Suite 800, Atención: Director General (*Chief Executive Officer*), San Diego, California 92101; o en la dirección que designe dicha parte mediante notificación por escrito a las otras Partes.

Sección 7.04 Renuncia de inmunidad.

En la medida en que lo permita la legislación aplicable, cada una de las partes acuerda que no hará valer ninguna inmunidad (y por la presente renuncia a cualquier inmunidad de este tipo) que pueda tener como entidad gubernamental o cuasi- gubernamental, frente a demandas, otras acciones y reclamaciones y cualquier sentencia con respecto a la ejecución de sus obligaciones en virtud del presente Contrato de Depósito.

Sección 7.05 Ejemplares.

Este Contrato de Depósito se suscribirá en 3 (tres) ejemplares originales, cada uno en los idiomas español e inglés, siendo los textos igualmente auténticos, y todos en conjunto constituirán un único y mismo instrumento.

Sección 7.06 Encabezados.

Los encabezados de las secciones no forman parte de este Contrato de Depósito y no se utilizarán para su interpretación.

Sección 7.07 Cesión.

Ninguna de las Partes podrá ceder los derechos u obligaciones previstas en este Contrato de Depósito, sin el consentimiento expreso y por escrito de las otras

other Parties hereto, except as otherwise expressly set forth in this Custodial Agreement. Any purported assignment or delegation in violation of this Section 7.07 shall be null and void and without force or effect.

Section 7.08 Integration.

This Custodial Agreement contains the final and complete integration of all prior expressions by the parties hereto with respect to the subject matter hereof and shall constitute the entire agreement among the parties hereto with respect to the subject matter hereof superseding all prior oral or written understandings.

Section 7.09 Binding Effect.

This Custodial Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns (including any trustee in bankruptcy). This Custodial Agreement shall create and constitute the continuing obligations of the parties hereto in accordance with its terms and shall remain in full force and effect until terminated in accordance with its terms; provided, however, that the rights and remedies with respect to any breach of any representation and warranty made by the Custodian shall be continuing and shall survive any termination of this Custodial Agreement.

Section 7.10 Severability of Provisions.

If one or more of the provisions of this Custodial Agreement shall be held invalid for any reason, such provisions shall be deemed severable from the remaining provisions of this Custodial Agreement and shall in no way affect the validity or enforceability of such remaining provisions. To the extent permitted by law, the parties hereto hereby waive any law which renders any provision of this Custodial Agreement prohibited or unenforceable.

Section 7.11 Rights Cumulative.

All rights and remedies under this Custodial Agreement are cumulative, and none is intended to be exclusive of another. No delay or omission in insisting upon the strict observance or performance of any provision of this Custodial Agreement, or in exercising any right or remedy, shall be construed as a waiver or

Partes, salvo que se establezca expresamente lo contrario en el presente Contrato de Depósito. Cualquier cesión o transmisión de derechos en violación de esta Sección 7.07 será nula y sin efectos.

Sección 7.08 Integración.

El presente Contrato de Depósito contiene la integración final y completa de todos los acuerdos realizados anteriormente por las partes en relación con el objeto del mismo y constituirá el acuerdo íntegro entre las partes en relación con el objeto del mismo, sustituyendo a todos los acuerdos orales o escritos anteriores.

Sección 7.09 Contrato jurídicamente vinculante.

El presente Contrato de Depósito es jurídicamente vinculante y se aplicará en beneficio de las partes y de sus respectivos sucesores y cesionarios autorizados (incluyendo cualquier fiduciario en quiebra). Este Contrato de Depósito crea y constituye las obligaciones continuas de las partes de acuerdo con sus términos y permanecerá en pleno vigor y efecto hasta que se dé por terminado de conformidad con lo previsto en el mismo; sin embargo, los derechos y recursos con respecto a cualquier incumplimiento de cualquier representación y garantía hecha por el Depositario continuarán y sobrevivirán a cualquier terminación de este Contrato de Depósito.

Sección 7.10 Independencia de las disposiciones.

Si una o varias de las disposiciones del presente Contrato de Depósito fueran declaradas nulas por cualquier motivo, dichas disposiciones se considerarán independientes del resto de las disposiciones del presente Contrato de Depósito y no afectarán en modo alguno a la validez o aplicabilidad de las disposiciones restantes. En la medida en que la ley lo permita, las partes renuncian a cualquier ley que prohíba o haga inaplicable cualquier disposición del presente Contrato de Depósito.

Sección 7.11 Derechos acumulativos.

Todos los derechos y recursos derivados del presente Contrato de Depósito son acumulativos, y ninguno pretende ser excluyente de otro. Ninguna demora u omisión en insistir en la estricta observancia o cumplimiento de cualquier disposición del presente Contrato de Depósito, o en el ejercicio de cualquier

relinquishment of such provision, nor shall it impair such right or remedy. Every right and remedy may be exercised from time to time and as often as deemed expedient.

Section 7.12 Consent to Jurisdiction by the Custodian and SANDAG.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE CUSTODIAN AND SANDAG HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA AND ANY APPELLATE COURT THEREOF, IN ANY ACTION, SUIT OR PROCEEDING BROUGHT AGAINST IT IN CONNECTION WITH THIS CUSTODIAL AGREEMENT OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT RELATING THERETO, AND EACH OF THE CUSTODIAN AND SANDAG HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD OR DETERMINED IN SUCH FEDERAL COURT. EACH OF THE CUSTODIAN AND SANDAG HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, SUIT OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE CUSTODIAN AND SANDAG HERETO HEREBY WAIVES AND AGREES NOT TO ASSERT BY WAY OF MOTION, AS A DEFENSE OR OTHERWISE IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURTS, THAT THE SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM, THAT THE VENUE OF THE SUIT, ACTION OR PROCEEDING IS IMPROPER OR THAT THE RELATED DOCUMENTS OR THE SUBJECT MATTER THEREOF MAY NOT BE LITIGATED IN OR BY SUCH COURTS.

derecho o recurso, se interpretará como una renuncia o desistimiento de dicha disposición, ni menoscabará dicho derecho o recurso. Todos los derechos y recursos podrán ejercitarse ocasionalmente y con la frecuencia que se considere oportuna.

Sección 7.12 Consentimiento a la jurisdicción por parte del Depositario y SANDAG.

MEDIANTE EL PRESENTE Y EN LA MEDIDA EN QUE LO PERMITA LA LEY APLICABLE, CADA UNO DEL DEPOSITARIO Y SANDAG SE SOMETEN IRREVOCABLEMENTE A LA JURISDICCIÓN EXCLUSIVA DEL TRIBUNAL DE DISTRITO SUR DE CALIFORNIA DE LOS ESTADOS UNIDOS DE AMÉRICA Y CUALQUIER TRIBUNAL DE APELACIÓN DEL MISMO, EN RELACIÓN CON CUALQUIER ACCIÓN, DEMANDA O PROCEDIMIENTO EN SU CONTRA EN VIRTUD DE ESTE CONTRATO DE DEPÓSITO O PARA EL RECONOCIMIENTO O EJECUCIÓN DE CUALQUIER SENTENCIA RELACIONADA CON EL MISMO, Y CADA UNO DE EL DEPOSITARIO Y SANDAG MEDIANTE EL PRESENTE ACUERDAN IRREVOCABLE E INCONDICIONALMENTE QUE TODAS LAS RECLAMACIONES CON RESPECTO A CUALQUIER ACCIÓN O PROCEDIMIENTO DE ESTE TIPO PODRÁN SER OÍDAS O RESUELTAS EN DICHO TRIBUNAL FEDERAL. TANTO EL DEPOSITARIO COMO SANDAG ACUERDAN QUE UNA SENTENCIA DEFINITIVA EN CUALQUIERA DE DICHAS ACCIONES, DEMANDAS O PROCEDIMIENTOS SERÁ CONCLUYENTE Y PODRÁ EJECUTARSE EN OTRAS JURISDICCIONES MEDIANTE UNA DEMANDA BASADA EN LA SENTENCIA O DE CUALQUIER OTRA FORMA PREVISTA POR LA LEY. EN LA MEDIDA EN QUE LO PERMITA LA LEY APLICABLE, TANTO EL DEPOSITARIO COMO SANDAG RENUNCIAN POR MEDIO DEL PRESENTE Y ACUERDAN NO HACER VALER MEDIANTE MOCIÓN, COMO DEFENSA O DE OTRO MODO EN CUALQUIERA DE DICHAS DEMANDAS, ACCIONES O PROCEDIMIENTOS, NINGUNA RECLAMACIÓN EN DONDE NO ESTÁN PERSONALMENTE SUJETOS A LA JURISDICCIÓN DE DICHOS TRIBUNALES, QUE LA DEMANDA, ACCIÓN O PROCEDIMIENTO SE PRESENTA EN UNA JURISDICCIÓN INCONVENIENTE, QUE EL LUGAR DE LA DEMANDA, ACCIÓN O PROCEDIMIENTO ES INADECUADO O QUE LOS DOCUMENTOS

Section 7.13 Enforceability Opinions.

(a) Promptly after the Effective Date of this Agreement, the Parties shall cause their respective counsel to deliver the legal opinions specified below as follows:

(i) NADBank's General Counsel shall deliver a signed opinion, addressed to SICT and SANDAG, as to NADBank's due organization and valid existence, power and authority, due authorization, execution and delivery of this Custodial Agreement and any related agreement to which it is a party (as reasonably requested by SICT and SANDAG) and the enforceability against NADBank of this Custodial Agreement and any related agreement to which it is a party, in form and substance reasonably satisfactory to SICT and SANDAG.

(ii) Counsel to SICT, who shall be reasonably acceptable to NADBank and SANDAG, shall deliver a signed opinion, addressed to NADBank and SANDAG, as to the valid existence, power and authority of SICT, and the due authorization, execution and delivery by SICT of this Custodial Agreement and, as applicable, the Toll Allocation Agreement, the Toll Governance Agreement, and any related agreement to which it is a party (as reasonably requested by NADBank and SANDAG) and the enforceability against SICT of this Custodial Agreement and, as applicable, the Toll Allocation Agreement, the Toll Governance Agreement, and any related agreement to which it is a party, in form and substance reasonably satisfactory to NADBank and SANDAG.

(iii) Counsel to SANDAG, who shall be reasonably acceptable to SICT and NADBank, shall deliver a signed opinion, addressed to SICT and NADBank, as to SANDAG's valid existence, power and authority, due authorization, execution and

RELACIONADOS O EL OBJETO DE LOS MISMOS NO PUEDEN SER LITIGADOS EN, O POR DICHOS TRIBUNALES.

Sección 7.13 Dictámenes de ejecutabilidad.

(a) Inmediatamente después de la Fecha de Entrada en Vigor del presente Contrato, las Partes harán que sus respectivos abogados emitan los dictámenes jurídicos que se especifican a continuación de la siguiente manera:

(i) El Abogado General del NADBank, entregará una opinión firmada, dirigida a SICT, y SANDAG, en cuanto a la debida organización y existencia válida, poder y autoridad, debida autorización del NADBank, ejecución y entrega de este Contrato de Depósito y cualquier acuerdo relacionado del que sea parte (según lo razonablemente solicitado por SICT, y SANDAG) y la ejecutabilidad contra el NADBank de este Contrato de Depósito y cualquier acuerdo relacionado del que sea parte, en forma y sustancia razonablemente satisfactoria para SICT, y SANDAG.

(ii) Los asesores jurídicos de SICT, que serán razonablemente aceptables para el NADBank y SANDAG, emitirán un dictamen firmado, dirigido al NADBank y SANDAG, sobre la existencia válida, el poder y la autoridad de SICT y la debida autorización, ejecución y entrega por parte de SICT del presente Contrato de Depósito y, en su caso, del Acuerdo de Distribución de Peaje, (ii) Los abogados de SANDAG y de SANDABank y, en su caso, de SANDAG y de SANDAG, la debida autorización, ejecución y entrega por parte de SICT del presente Contrato de Depósito y, en su caso, del Acuerdo de Distribución de Peaje, del Contrato de gestión de peaje y de cualquier otro contrato relacionado del que sea parte (conforme a lo razonablemente solicitado por NADBank y SANDAG) y la exigibilidad frente a SICT del presente Contrato de Depósito y, en su caso, del Acuerdo de Distribución de Peaje, del Contrato de gestión de peaje y de cualquier otro contrato relacionado del que sea parte, en forma y fondo razonablemente satisfactorios para NADBank y SANDAG.

(iii) El abogado de SANDAG, que será razonablemente aceptable para SICT, y NADBank, entregará una opinión firmada, dirigida a SICT, y NADBank, sobre la existencia válida, el poder y la autoridad de SANDAG, la debida autorización,

delivery of this Custodial Agreement, the Toll Allocation Agreement, the Toll Governance Agreement, and any related agreement to which it is a party (as reasonably requested by SICT and NADBank) and the enforceability against SANDAG of this Custodial Agreement, the Toll Allocation Agreement, the Toll Governance Agreement and any related agreement to which it is a party, in form and substance reasonably satisfactory to SICT and NADBank.

(b) The Parties shall cause their respective counsel to deliver, contemporaneously with the opinions specified above or at such later date or dates as may be specified by SANDAG, such additional opinions or reliance letters addressed to the Trustee, the TIFIA Lender and such other parties as reasonably requested by SANDAG in connection with SANDAG's financing of the Project.

(c) SANDAG shall be solely liable for paying all reasonable legal fees in connection with the preparation, negotiation, execution and delivery of the opinions delivered pursuant to this Section 7.13.

ejecución y entrega de este Contrato de Depósito, el Acuerdo de Distribución de Peaje, el Contrato de Gobernanza de Peaje, y cualquier acuerdo relacionado del que sea parte (según lo razonablemente solicitado por SICT, y NADBank) y la exigibilidad frente a SANDAG del presente Contrato de Depósito, el Acuerdo de Distribución de Peaje, el Contrato de Gobernanza de Peaje y cualquier acuerdo relacionado del que sea parte, en forma y fondo razonablemente satisfactorios para SICT, y NADBank.

(b) Las Partes harán que sus respectivos abogados emitan, simultáneamente con los dictámenes especificados anteriormente o en la fecha o fechas posteriores que especifique SANDAG, los dictámenes o cartas de confianza adicionales dirigidos al Fiduciario, al Prestamista TIFIA y a las demás partes que SANDAG solicite razonablemente en relación con la financiación del Proyecto por parte de SANDAG.

(c) SANDAG será el único responsable del pago de todos los honorarios legales razonables relacionados con la preparación, negociación, ejecución y entrega de los dictámenes emitidos en virtud de la presente Sección 7.13.

[SIGNATURE SHEET FOLLOWS / CONTINUA HOJA DE FIRMAS]

IN WITNESS WHEREOF, each of the parties hereto has caused this Custodial Agreement to be executed in its name and on its behalf by a duly authorized officer on the day and year first above written.

NORTH AMERICAN DEVELOPMENT BANK,
as Custodian / como Depositario

By / Por: [●]
Name / Nombre: [●]
Title / Cargo: [●]

**MINISTRY OF INFRASTRUCTURE, COMMUNICATIONS AND
TRANSPORTATION OF THE UNITED MEXICAN STATES**

By / Por: [●]
Name / Nombre: [●]
Title / Cargo: [●]

SAN DIEGO ASSOCIATION OF GOVERNMENTS

By / Por: [●]
Name / Nombre: [●]
Title / Cargo: [●]

EXHIBIT A / ANEXO A

NADBank Investment Policy / Política de Inversiones de NadBank

DRAFT

EXHIBIT B / ANEXO B Fee Schedule / Anexo de Honorarios

After Commencement of Toll Operations, SANDAG and SICT shall jointly pay NADBank an Annual Fee of \$25,000 by July 15 following the conclusion of a Fiscal Year, as annual compensation for NADBank acting as the Custodian under the Agreement for such Fiscal Year. Such fee shall be adjusted on a daily, prorated basis for any year that NADBank performs its duties for less than a full Fiscal Year. Such Annual Fee shall be increased annually by the lesser of 2.5% or the Consumer Price Index (CPI-U) for the past Fiscal Year.

Within 365 days following the date of Commencement of Toll Operations, SANDAG and SICT shall jointly pay NADBank a one-time fee of \$25,000 ("Set-Up Fee") to compensate NADBank for its expenses in preparing to fulfill its duties as Custodian under this Agreement.

Después del Inicio de las Operaciones de Peaje, SANDAG y SICT pagarán conjuntamente a NADBank una tarifa anual de \$25,000 antes del 15 de julio siguiente a la conclusión de un Año Fiscal, como compensación anual a NADBank por actuar como el Depositario bajo el presente Contrato para dicho Año Fiscal. Dicha tarifa se ajustará diariamente de manera prorrateada por cualquier año en que NADBank realice sus funciones por menos de un Año Fiscal completo. Dicha Tarifa Anual se incrementará anualmente por el menor de 2.5% o el Índice de Precios al Consumidor (IPC- _U) del último Año Fiscal.

Dentro de los 365 días siguientes a la fecha de Inicio de las Operaciones de Peaje, SANDAG y SICT pagarán conjuntamente a NADBank una tarifa única de \$25,000 ("Tarifa de Instalación") para compensar a NADBank por sus gastos de preparación para cumplir sus deberes como Depositario bajo el presente Contrato.

(TOLL GOVERNANCE AGREEMENT)**AGREEMENT****BETWEEN**

**THE MINISTRY OF INFRASTRUCTURE,
COMMUNICATIONS AND TRANSPORTATION
OF THE UNITED MEXICAN STATES,**

AND

**THE SAN DIEGO ASSOCIATION OF
GOVERNMENTS, CALIFORNIA, UNITED
STATES OF AMERICA**

**CONCERNING TOLL GOVERNANCE
RELATING TO THE NEW INTERNATIONAL
BORDER CROSSING AND PORT MESA DE
OTAY II - OTAY MESA EAST**

The Ministry of Infrastructure, Communications and Transportation of the United Mexican States (“SICT”), through Mr. Jorge Nuño Lara, Minister of Infrastructure, Communications and Transport, and the San Diego Association of Governments, a local agency of the State of California, United States of America (“SANDAG” and jointly with SICT, the “Parties”), through Mario Orso, Chief Executive Officer, hereby enter into this Agreement Concerning Toll Governance relating to the New International Border Crossing and Port Mesa de Otay II - Otay Mesa East (this “Agreement”).

RECITALS

WHEREAS, SICT and SANDAG have previously entered into an Agreement concerning the Collection and Sharing of Toll Revenues Relating to the New International Border Crossing and Port Mesa de Otay II – Otay Mesa East, executed as of October 24, 2022, which was amended and restated heretofore (as it may be further amended or modified from time to time, the “Toll Allocation Agreement”); and

WHEREAS, under the Toll Allocation Agreement, SICT and SANDAG establish a collaboration to implement a traffic congestion management and revenue collection strategy based on variable tolling, with tolls collected for both northbound and

(ACUERDO DE GOBERNANZA DE PEAJE)**ACUERDO****ENTRE**

**LA SECRETARÍA DE INFRAESTRUCTURA,
COMUNICACIONES Y TRANSPORTES DE LOS
ESTADOS UNIDOS MEXICANOS**

Y

**LA ASOCIACIÓN DE GOBIERNOS DE SAN
DIEGO, CALIFORNIA, ESTADOS UNIDOS DE
AMÉRICA**

**RELATIVO A LA GOBERNANZA DE PEAJE
DEL NUEVO CRUCE Y PUERTO FRONTERIZO
INTERNACIONAL MESA DE OTAY II - OTAY
MESA EAST**

La Secretaría de Infraestructura, Comunicaciones y Transportes de los Estados Unidos Mexicanos (“SICT”), por conducto del C. Jorge Nuño Lara, Secretario de Infraestructura, Comunicaciones y Transportes, y la Asociación de Gobiernos de San Diego, una agencia local del Estado de California, Estados Unidos de América (“SANDAG” y conjuntamente con SICT, las “Partes”), por conducto del señor Mario Orso, Presidente Ejecutivo, celebran el presente Acuerdo relativo a la Gobernanza de Peaje relacionado con el Nuevo Cruce y Puerto Fronterizo Internacional Mesa de Otay II - Otay Mesa East (el “Acuerdo”).

ANTECEDENTES

CONSIDERANDO que, SICT y SANDAG han celebrado previamente un Acuerdo relativo al Cobro y Distribución de los Ingresos por Peaje del Nuevo Cruce y Puerto Fronterizo Internacional Mesa de Otay II - Otay Mesa East, celebrado el 24 de octubre de 2022, el cual fue modificado y reexpresado en esta fecha (según pueda ser enmendado o modificado de tiempo en tiempo, el “Acuerdo de Distribución de Ingresos”); y

CONSIDERANDO que, en virtud del Acuerdo de Distribución de Ingresos, SICT y SANDAG establecen una colaboración para implementar una estrategia de gestión con respecto a la congestión del tráfico y recaudación de ingresos basada en el peaje variable,

southbound directions, by way of an exclusive collection system with components located within the United States of America (the “United States”) and the United Mexican States (“Mexico”), and in the case of Mexico, only with a non-charging Toll reading system that shall serve as the primary Toll reading system for the Project (except when such system is not operating, during which time the Toll reading system on California State Route 11 shall serve as the primary Toll reading system for the Project until the Mexico-side Toll reading system is again operating); and

WHEREAS, SANDAG and SICT have a joint desire to minimize the likelihood that Restricted Toll Revenues would be collected from SR 11 readers, and if such revenues are required to be collected, to ensure that such revenues are used to the greatest extent possible to pay eligible Operations and Maintenance Expenses.

WHEREAS, under the Toll Allocation Agreement, SICT and SANDAG contemplate this Agreement to set forth (i) the governance process of the Binational Working Group, (ii) matters related to Toll setting, collection and approval of the Operations and Maintenance Expenses Budget, and (iii) matters related to traffic congestion and traffic flow management.

REPRESENTATIONS

I. SICT hereby represents to SANDAG:

I.1. That it is an Agency of the Federal Executive Branch, which has the authority to enter into this Agreement, in accordance with the provisions set forth in articles 90 of the Constitution of the United Mexican States (*Constitución Política de los Estados Unidos Mexicanos*); 1, 2, section I, 26 and 36 sections XXI, XXII, XXIV, XXVII of the Organic Law of the Federal Public Administration (*Ley Orgánica de la Administración Pública Federal*); is able to formulate and conduct policies and programs for the development of transportation and communications in accordance with the needs of the country; build and maintain federal roads and bridges, as well as other authorities

con peajes recaudados tanto para el sentido norte como para el sentido sur, mediante un sistema de recaudación exclusivo con componentes ubicados dentro de los Estados Unidos de América (“Estados Unidos”) y los Estados Unidos Mexicanos (“México”), y en el caso de México, únicamente con un sistema de lectura de peaje sin cobro, que servirá como el sistema principal de lectura de Peajes para el Proyecto (excepto cuando dicho sistema no esté operando, durante lo cual el sistema de lectura de Peajes en la Ruta Estatal 11 de California servirá como el sistema principal de lectura de Peajes para el Proyecto hasta que el sistema de lectura de Peajes del lado de México vuelva a estar operando); y

CONSIDERANDO que, SANDAG y SICT tienen el deseo conjunto de minimizar la probabilidad de que se recauden Ingresos de Peaje Restringidos de los lectores de la Ruta Estatal 11, y en caso de que sea necesario recaudar dichos ingresos, asegurar que estos se utilicen en la mayor medida posible para pagar los Gastos Elegibles de Operación y Mantenimiento.

CONSIDERANDO que, en virtud del Acuerdo de Distribución de Ingresos, SICT y SANDAG contemplan este Acuerdo para establecer (i) el proceso de gobernanza del Grupo de Trabajo Binacional, (ii) los asuntos relacionados con la fijación y cobro de Peajes, y la aprobación del Presupuesto de Gastos de Operación y Mantenimiento, y (iii) los asuntos relacionados con la congestión del tráfico y el manejo del flujo de tráfico.

DECLARACIONES

I. SICT, por medio del presente, declara a SANDAG:

I.1. Que es una Dependencia del Poder Ejecutivo Federal, facultada para celebrar el presente Acuerdo, de conformidad con lo dispuesto en los artículos 90 de la Constitución Política de los Estados Unidos Mexicanos; 1°, 2°, fracción I, 26 y 36 fracciones XXI, XXII, XXIV, XXVII de la Ley Orgánica de la Administración Pública Federal; está facultada para formular y conducir las políticas y programas para el desarrollo de los transportes y las comunicaciones de acuerdo con las necesidades del país; construir y conservar los caminos y puentes federales, así como las

expressly conferred by applicable laws and ancillary regulations.

I.2. That Mr. Jorge Nuño Lara, the Minister of Infrastructure, Communications and Transportation, has the authority to enter into this Agreement, pursuant to the provisions of article 2, section I and 4 of the Internal Regulations of the Ministry of Infrastructure, Communications and Transportation (*Reglamento Interior de la Secretaría de Infraestructura, Comunicaciones y Transportes*).

I.3. That for the purposes of this Agreement, its current address to receive all types of notifications is the one located at Insurgentes Sur number 1089, ground floor, Colonia Noche Buena, Alcaldía Benito Juárez, Zip Code 03720, in Mexico City, or such other address that the Mexican Representative provides in writing to the SANDAG Representative from time to time.

II. SANDAG hereby represents to SICT:

II.1. That it is a local agency of the State of California, which has authority to enter this Agreement in accordance with the provisions of the San Diego Regional Transportation Consolidation Act (California Public Utilities Code Section 132350 *et seq.*) and the Otay Mesa East Toll Facility Act (California Streets and Highways Code Sections 31460 *et seq.*), and the amendments thereto.

II.2. That Mario Orso, the Chief Executive Officer of SANDAG, has the authority to enter into this Agreement.

II.3. That for the purposes of this Agreement, its current address to receive all types of notifications is the one located at 401 B Street, Suite 800, Attention: General Counsel, San Diego, California 92101, or such other address that the SANDAG Representative provides in writing to the Mexican Representative from time to time.

demás facultades que expresamente le confieran las leyes y reglamentos aplicables.

I.2. Que el C. Jorge Nuño Lara, Secretario de Infraestructura, Comunicaciones y Transportes, está facultado para celebrar el presente Acuerdo, de conformidad con lo dispuesto en el artículo 2, fracción I y 4° del Reglamento Interior de la Secretaría de Infraestructura, Comunicaciones y Transportes.

I.3. Que, para efectos del presente Acuerdo, señala como su domicilio actual para recibir todo tipo de notificaciones, el ubicado en Insurgentes Sur número 1089, planta baja, Colonia Noche Buena, Alcaldía Benito Juárez, Código Postal 03720, en la Ciudad de México, o cualquier otro domicilio que el Representante Mexicano proporcione por escrito al Representante SANDAG de tiempo en tiempo.

II. SANDAG, por medio del presente declara a SICT:

II.1. Que es una agencia local del Estado de California, que cuenta con las atribuciones necesarias para celebrar el presente Acuerdo de conformidad con las disposiciones de la Ley de Consolidación del Transporte Regional de San Diego (*San Diego Regional Transportation Consolidation Act*), Código de Servicios Públicos de California, Sección 132350 y siguientes (*California Public Utilities Code Section 132350*) y la Ley de Implementación de Peaje Otay Mesa East (*Otay Mesa East Toll Facility Act*), Código de Calles y Carreteras de California Secciones 31460 y siguientes (*California Streets and Highways Code Sections 31460 et seq.*), y las enmiendas a las mismas.

II.2. Que el señor Mario Orso, Presidente Ejecutivo de SANDAG, está facultado para suscribir el presente Acuerdo.

II.3. Que, para efectos del presente Acuerdo, señala como su domicilio actual para recibir todo tipo de notificaciones, el ubicado en 401 B Street, Suite 800, Atención: General Counsel, San Diego, California 92101, o cualquier otro domicilio que el Representante SANDAG proporcione por escrito al Representante Mexicano de tiempo en tiempo.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I INITIAL PROVISIONS AND DEFINITIONS

Section 1.01 Toll Governance Agreement. This Agreement is hereby acknowledged by the Parties as the “Toll Governance Agreement” referenced in Article III of the Toll Allocation Agreement.

Section 1.02 Scope of Agreement. The purpose of this Agreement is to set forth (i) the governance process of the Binational Working Group, (ii) matters related to Toll setting, Toll collection and approval of the Operations and Maintenance Expenses Budget, and (iii) matters related to traffic congestion and traffic flow management.

Section 1.03 Delegated Authority.

(a) Each Party shall delegate regulatory and administrative authority to the corresponding public officials and ensure that such act in accordance with such Party’s powers and fulfill such Party’s obligations as set forth in this Agreement in the exercise of that authority.

(b) The “Mexican Representative” under the Toll Allocation Agreement shall serve as the authorized representative of SICT and as the point of contact for all communications with SANDAG related to this Agreement.

(c) The “SANDAG Representative” under the Toll Allocation Agreement shall serve as the authorized representative of SANDAG and as the point of contact for all communications with SICT related to this Agreement.

(d) For purposes of this Agreement, the State of California Department of Transportation (“Caltrans”) shall designate in writing to SICT and SANDAG an authorized person (the “Caltrans Representative”) who shall serve as the authorized representative of Caltrans and as the point of contact for all communications with

AHORA, POR TANTO, las Partes acuerdan lo siguiente:

ARTÍCULO I DISPOSICIONES INICIALES Y DEFINICIONES

Sección 1.01 Acuerdo de Gobernanza de Peaje. El presente Acuerdo es reconocido por las Partes como el “Acuerdo de Gobernanza de Peaje” al que se hace referencia en el Artículo III del Acuerdo de Distribución de Ingresos.

Sección 1.02 Alcance del Acuerdo. El objeto del presente Acuerdo es establecer (i) el proceso de gobernanza del Grupo de Trabajo Binacional, (ii) asuntos relacionados con la fijación y cobro de Peajes, y la aprobación del Presupuesto de Gastos de Operación y Mantenimiento, y (iii) asuntos relacionados con la congestión del tráfico y el manejo del flujo de tráfico.

Sección 1.03 Funcionarios Delegados.

(a) Cada Parte delegará la facultad regulatoria y administrativa a los servidores públicos correspondientes y se asegurarán de que actúen de conformidad con las atribuciones de esa Parte, y cumplan con las obligaciones de esa Parte conforme se encuentran establecidas en el presente Acuerdo, en ejercicio de esa facultad.

(b) El “Representante Mexicano” conforme al Acuerdo de Distribución de Ingresos fungirá como representante autorizado de la SICT y como punto de contacto para todas las comunicaciones con SANDAG relacionadas con el presente Acuerdo.

(c) El “Representante SANDAG” conforme al Acuerdo de Distribución de Ingresos actuará como representante autorizado de SANDAG y como punto de contacto para todas las comunicaciones con SICT relacionadas con el presente Acuerdo.

(d) Para los fines de este Acuerdo, el Departamento de Transporte del Estado de California (*State of California Department of Transportation* “Caltrans”) designará por escrito a SICT y SANDAG a una persona autorizada (el “Representante de Caltrans”) que actuará como representante autorizado de Caltrans y

SICT and SANDAG related to the Binational Working Group; provided, however, that the initial Caltrans Representative shall be the Caltrans District 11 Director, or his/her designee.

Section 1.04 Definitions.

(a) For purposes of this Agreement, unless otherwise provided:

“Agreement” means this agreement as amended and restated from time to time.

“Binational Working Group” means the work group made up of the representatives of SICT and SANDAG, having the purposes and functions described in Article III of the Toll Allocation Agreement. Such Binational Working Group is the Binational Working Group constituted under this Agreement.

“Effective Date” means the date set forth in Section 7.01.

“ITS Agreement” means the Intelligent Transportation System Agreement to be executed and delivered by the Parties after the date of this Agreement, relating to the procurement, construction, ownership, deployment, data management, operation, maintenance, and repair of the ITS Infrastructure.

“Mexico” means the United Mexican States.

“Parties” means jointly SANDAG and SICT.

“SANDAG” means the San Diego Association of Governments, California, United States of America

“SANDAG Toll Operator” means the SANDAG department, division or group responsible for providing customer services, including call center, billing, payment processing, and other related services, for the Toll Transaction Location.

“SICT” means the Ministry of Infrastructure, Communications and Transportation of Mexico.

como punto de contacto para todas las comunicaciones con SICT y SANDAG relacionadas con el Grupo de Trabajo Binacional; sin embargo, el Representante de Caltrans inicial será el Director del Distrito 11 de Caltrans, o su designado.

Sección 1.04 Definiciones.

(a) Para los propósitos del presente Acuerdo, a menos que se disponga lo contrario:

“Acuerdo” significa el presente acuerdo, según el mismo sea modificado de tiempo en tiempo.

“Grupo de Trabajo Binacional” significa el grupo de trabajo integrado por el o los representantes de la SICT y de SANDAG, el cual tendrá los propósitos y funciones que se describen en el Artículo III del presente Acuerdo de Distribución de Ingresos. Dicho Grupo de Trabajo Binacional se constituye en virtud del presente Acuerdo.

“Fecha de Entrada en Vigor” significa la fecha establecida en la Sección 7.01.

“Acuerdo ITS” significa el Acuerdo sobre el Sistema de Transporte Inteligente que las Partes celebrarán y entregarán con posterioridad a la fecha del presente Acuerdo, relativo a la adquisición, construcción, propiedad, implementación, gestión de datos, operación, mantenimiento y reparación de la Infraestructura ITS.

“México” significa los Estados Unidos Mexicanos.

“Partes” significa conjuntamente SANDAG y SICT.

“SANDAG” significa la Asociación de Gobiernos de San Diego, California, Estados Unidos de América.

“Operador de Peaje SANDAG” se refiere al departamento, división o grupo de SANDAG responsable de proporcionar servicios al cliente, incluido el centro de llamadas, la facturación, el procesamiento de pagos y otros servicios relacionados, para la Zona de Cobro de Peaje.

“SICT” significa la Secretaría de Infraestructura, Comunicaciones y Transportes de México.

“Toll Allocation Agreement” has the meaning ascribed to such term in the first Recital of this Agreement.

“Toll Discount” means a discount applied to reduce the Toll designated for a kind or class of vehicle, account, transponder, or user of the Toll Road.

“Toll Exemption” means an exemption from the payment of the entire Toll designated for a kind or class of vehicle, account, transponder, or user of the Toll Road.

“Toll Override” means a reversal of a Toll transaction, or a temporary and situational exemption from payment of the entire Toll, by SANDAG Toll Operator pursuant to the Toll Policy.

“Toll Policy” means a document that defines the key controlling aspects of Toll Road operations.

“Toll Promotion” means a Toll Exemption or Toll Discount that applies only for a designated period or expires on a designated date.

“United States” means the United States of America.

“Wait Time” shall have the meaning to be agreed to by the Parties in the ITS Agreement.

(b) Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Toll Allocation Agreement.

ARTICLE II PRINCIPAL UNDERSTANDINGS

Section 2.01 Principal Understandings. The Parties hereby acknowledge and agree that:

(a) Expertise regarding Tolls, the Toll Road and traffic to and from the Toll Road can be found among the officers and staff of both Parties.

“Acuerdo Distribución de Ingresos” tiene el significado asignado en el primer Antecedente del presente Acuerdo.

“Descuento de Peaje” significa un descuento aplicado para reducir el Peaje designado, para un tipo o clase de vehículo, cuenta, transpondedor o usuario de la Autopista de Peaje.

“Exención de Peaje” significa una exención de la totalidad del pago del Peaje designado, para un tipo o clase de vehículo, cuenta, transpondedor o usuario de la Autopista de Peaje.

“Anulación de Peaje” significa la anulación de una transacción de Peaje, o una exención temporal y situacional del pago de la totalidad del peaje, por parte del Operador de Peaje SANDAG de conformidad con la Política de Peaje.

“Política de Peaje” significa un documento que define los aspectos clave de control de las operaciones de la autopista de peaje.

“Promoción de Peaje” significa una Exención de Peaje o un Descuento de Peaje que se aplica sólo durante un período determinado o que expira en una fecha determinada.

“Estados Unidos” significa los Estados Unidos de América.

“Tiempo de Espera” tendrá el significado que acuerden las Partes en el Acuerdo ITS.

(b) Los términos en mayúsculas no definidos en este documento tendrán el significado que se les atribuye en el Acuerdo de Distribución de Ingresos.

ARTÍCULO II ENTENDIMIENTOS PRINCIPALES

Sección 2.01 Entendimientos Principales. Las Partes reconocen y acuerdan que:

(a) Los servidores públicos y el personal de ambas Partes cuentan con competencias en materia de Peajes, la Autopista de Peaje y el tráfico de entrada y salida de la Autopista de Peaje.

(b) Such expertise can be utilized best in a collaborative setting through the establishment of a working group that includes appointees from both Parties.

(c) The Parties to this Agreement and SANDAG as the operator of the Toll Roads can benefit from traffic, budget and other proposals developed by such a working group.

Section 2.02 Confirmation of the Toll Allocation Agreement. Nothing in this Agreement amends the Toll Allocation Agreement.

ARTICLE III BINATIONAL WORKING GROUP STRUCTURE AND INTERNAL PROCEDURES

Section 3.01 Establishment and Composition of Binational Working Group and Its Officers.

(a) The Parties agree to appoint incumbent members and alternate members of the Binational Working Group as set forth in this Article.

(b) Each of SICT and SANDAG shall appoint three incumbent members of the Binational Working Group, for a total of six incumbent members. Notwithstanding the forgoing, one of SANDAG's three incumbent members shall be from Caltrans and shall be appointed by the Caltrans Representative. Each of SICT and SANDAG shall appoint two alternate members of the Binational Working Group, for a total of four alternate members. Advisory member positions (e.g., an advisory member from U.S. Customs and Border Protection (CBP) or from Mexico's Ministry of Foreign Affairs (SRE)) may be created or eliminated in accordance with the future bylaws to be adopted pursuant to Section 3.04. The applicable advisory member entity (e.g., CBP or SRE) shall be responsible for appointment of its advisory member. Any appointed member, alternate member, or advisory member may be replaced at any time by the applicable appointing party. The term of service of each appointee shall continue until removed or replaced by the appointing party. If any vacancy occurs in any member, alternate, or advisory member position, the applicable appointing party shall promptly fill the vacancy.

(b) Dicha competencia puede aprovecharse plenamente en un marco de colaboración mediante la creación de un grupo de trabajo que incluya a representantes de ambas Partes.

(c) Las Partes de este Acuerdo y SANDAG, como operador de las Autopistas de Peaje, pueden beneficiarse de las propuestas de tráfico, presupuesto y de otro tipo desarrolladas por dicho grupo de trabajo.

Artículo 2.02 Confirmación del Acuerdo de Distribución de Ingresos. Ninguna disposición del presente Acuerdo modifica el Acuerdo de Distribución de Ingresos.

ARTÍCULO III ESTRUCTURA DEL GRUPO DE TRABAJO BINACIONAL Y PROCEDIMIENTOS INTERNOS

Sección 3.01 Establecimiento y Composición del Grupo de Trabajo Binacional y Sus Funcionarios.

(a) Las Partes acuerdan designar a los miembros titulares y suplentes del Grupo de Trabajo Binacional conforme a lo establecido en el presente Artículo.

(b) Cada uno de SICT y SANDAG designará a tres miembros titulares del Grupo de Trabajo Binacional, para un total de seis miembros titulares. Sin embargo, uno de los tres miembros titulares de SANDAG será de Caltrans y será nombrado por el Representante de Caltrans. Cada uno de SICT y SANDAG designará a dos miembros suplentes del Grupo de Trabajo Binacional, para un total de cuatro miembros suplentes. Los cargos de miembro asesor (v.g. un miembro asesor de Aduanas y Protección Fronteriza de EE.UU. (*Customs and Border Protection* "CBP") o de la Secretaría de Relaciones Exteriores de México (SRE)) podrán ser creados o eliminados de conformidad con los estatutos futuros que se adopten de conformidad con la Sección 3.04. La entidad asesora aplicable (v.g. CBP o SRE) será responsable del nombramiento de su miembro asesor. Cualquier miembro designado, miembro suplente o miembro asesor podrá ser sustituido en cualquier momento por la parte que lo haya designado. El periodo de servicio de cada miembro designado continuará hasta que sea removido o reemplazado por la parte que lo designó. Si se produce una vacante en cualquier puesto de miembro,

(c) Each appointing party may select appointees based on such expertise and knowledge as the appointing party deems relevant, which may include, without limitation, expertise or knowledge regarding toll operations, finance, border capital planning, and the Project.

(d) The Mexican Representative shall notify the SANDAG Representative in writing of its appointments under subsection (b) of this Section. The SANDAG Representative shall notify the Mexican Representative in writing of its appointments under subsection (b) of this Section. Any advisory member entity shall notify both the SANDAG Representative and Mexican Representative in writing of its appointments under subsection (b) of this Section. Such notices shall be conclusive evidence of appointments under this Agreement upon which each Party may rely without further inquiry.

(e) At any meeting of the Binational Working Group where an incumbent member is absent or there is an unfilled vacancy for an incumbent member, a Party's alternate member present at that meeting may serve in the place of the absent incumbent member or for the vacant incumbent member position. The Party's alternate member shall announce at the opening of the meeting or during roll call the member position that the alternate member will fill during such meeting.

(f) The Binational Working Group shall elect from among its incumbent members a Chairperson and a Vice Chairperson. The Chairperson and Vice Chairperson shall serve overlapping terms that, except for the Initial Term, shall be two years in duration. The Initial Term, which may be longer than two years, but no longer than three years, shall begin at the first meeting held following execution of this Agreement and shall end at the first meeting held in July following the passing of two years from such first meeting, in accordance with Section 3.02(a). All subsequent, overlapping terms shall commence at such first meeting in July and end at the first meeting in July, two years later.

miembro suplente o miembro asesor, la parte que lo haya designado cubrirá la vacante sin demora.

(c) Cada parte designante podrá seleccionar a las personas designadas en función de las competencias y los conocimientos que la parte que lo designe considere pertinentes, que podrán incluir, sin limitación, la experiencia o los conocimientos relativos a las operaciones de peaje, las finanzas, la planificación del presupuesto fronterizo y el Proyecto.

(d) El Representante Mexicano notificará por escrito al Representante SANDAG sus nombramientos conforme al inciso (b) de esta Sección. El Representante SANDAG notificará por escrito al Representante Mexicano sus nombramientos conforme al inciso (b) de esta Sección. Toda entidad asesora deberá notificar por escrito al Representante SANDAG y al Representante Mexicano sus nombramientos conforme al inciso (b) de esta Sección. Dichas notificaciones serán prueba fehaciente de las designaciones en virtud del presente Acuerdo, en las que cada una de las Partes podrá basarse sin mayor investigación.

(e) En cualquier reunión del Grupo de Trabajo Binacional en la que un miembro titular esté ausente o haya una vacante no cubierta por un miembro titular, un miembro suplente de una Parte presente en dicha reunión podrá actuar en lugar del miembro titular ausente o para el puesto vacante de miembro titular. El miembro suplente de una Parte anunciará al inicio de la reunión o durante la votación nominal la posición de miembro que el miembro suplente ocupará durante dicha reunión.

(f) El Grupo de Trabajo Binacional elegirá de entre sus miembros titulares un Presidente y un Vicepresidente. El Presidente y el Vicepresidente desempeñarán sus cargos por períodos simultáneos que, con excepción del Período Inicial, tendrán una duración de dos años. El Período Inicial, que podrá ser superior a dos años, pero no superior a tres, comenzará en la primera reunión que se celebre tras la firma del presente Acuerdo y finalizará en la primera reunión que se celebre en julio siguiente al transcurso de dos años a partir de dicha primera reunión, de conformidad con la Sección 3.02(a). Todos los períodos siguientes simultáneos comenzarán en la primera reunión de julio

(g) Elections shall occur at the applicable meeting before any new business item is considered, with elections given effect immediately. The initial Chairperson shall be elected from the incumbent members appointed by SICT. The Chairperson appointed at the beginning of each subsequent term must be elected from the incumbent members appointed by the Party that did not hold the Chairperson position in the previous term, such that the Chairperson position alternates between the Parties with each new term. At the beginning of each term, the Chairperson shall be elected first and the Vice Chairperson second. The Vice Chairperson must be elected from among the incumbent members appointed by the Party who did not appoint the incumbent member elected to be Chairperson. If there is a vacancy in the position of Chairperson or Vice Chairperson prior to conclusion of the applicable term, at the next meeting following such vacancy, a replacement for the remaining term shall be elected to the vacant office, but only from among the incumbent members appointed by the same Party who had appointed the member in the office that is being replaced. The Vice Chairperson shall perform the duties of Chairperson when the office of Chairperson is vacant or the Chairperson is unable to perform such duties due to illness, injury, or disability. The Vice Chairperson shall conduct any meeting of the Binational Working Group when the Chairperson is absent from such meeting.

(h) The Binational Working Group shall elect from among its incumbent members such additional officers as the Binational Working Group shall establish through its bylaws, for terms of such duration as it may establish for each such office. No member may simultaneously hold more than one office in the Binational Working Group.

Section 3.02 Meetings.

(a) The Binational Working Group shall convene its initial meeting no less than six months prior to Commencement of Toll Road Operations and with sufficient time to approve the initial Operations and Maintenance Expenses Budget and make any necessary recommendations related to applicable Toll Rates. After its initial meeting, the Binational Working Group

y terminarán en la primera reunión de julio, transcurridos dos años.

(g) Las elecciones tendrán lugar en la reunión correspondiente antes de cualquier nuevo punto del orden del día, y entrarán en vigor inmediatamente. El Presidente inicial será electo de entre los miembros titulares designados por SICT. El Presidente designado al comienzo de cada cargo subsiguiente deberá ser elegido de entre los miembros designados por la Parte que no ocupó el cargo de Presidente en el periodo anterior, de modo que el cargo de Presidente se alterne entre las Partes con cada nuevo periodo. Al comienzo de cada cargo, se elegirá en primer lugar al Presidente y en segundo lugar al Vicepresidente. El Vicepresidente deberá ser elegido entre los miembros titulares designados por la Parte que no haya designado al miembro elegido para el cargo de Presidente. En caso de que se produzca una vacante en el cargo de Presidente o Vicepresidente antes de que concluya el mandato de dos años aplicable, en la reunión siguiente a dicha vacante se elegirá un sustituto para el cargo restante, pero solo entre los miembros designados por la misma Parte que había nombrado al miembro en el cargo que se sustituye. El Vicepresidente desempeñará las funciones de Presidente cuando el cargo de Presidente esté vacante o el Presidente no pueda desempeñar dichas funciones por enfermedad, lesión o incapacidad. El Vicepresidente dirigirá cualquier reunión del Grupo Binacional de Trabajo cuando el Presidente esté ausente de la misma.

(h) El Grupo de Trabajo Binacional elegirá de entre sus miembros titulares a los funcionarios adicionales que el Grupo de Trabajo Binacional establecerá mediante sus estatutos sociales, durante los términos de duración que establezca para cada uno de dichos cargos. Ningún miembro podrá ocupar simultáneamente más de un cargo en el Grupo de Trabajo Binacional.

Sección 3.02 Reuniones.

(a) El Grupo de Trabajo Binacional convocará una reunión inicial por lo menos seis meses antes del Inicio de Operaciones de la Autopista de Peaje y con el tiempo suficiente para aprobar el Presupuesto inicial de Gastos de Operación y Mantenimiento, y hacer las recomendaciones necesarias relacionadas con las Tarifas de Peaje aplicables. Después de su reunión

shall meet as often as the Chairperson and Vice Chairperson jointly deem appropriate, but in no case less than twice each Fiscal Year unless a less frequent schedule is approved by the Binational Working Group. The meetings shall be at a reasonable time and location in the County of San Diego, State of California, United States, or virtually or telephonically, in accordance with the provisions of applicable legislation.

(b) The Chairperson and Vice Chairperson shall prepare the agenda for each meeting. The Chairperson or Vice Chairperson shall distribute a draft agenda to the incumbent members, alternate members and advisory members of the Binational Working Group at least five (5) Business Days before the meeting and shall cause the agenda to be publicly posted in accordance with California Government Code, Sections 54950 *et seq.*, as the same may be amended from time to time. Meetings of the Binational Working Group shall be conducted in accordance with any laws of the State of California applicable to such meetings.

(c) The SICT incumbent members who attend a meeting of the Binational Working Group as an incumbent member, as well as up to two Mexican advisory members, shall be reimbursed for their travel expenses in accordance with SANDAG's Board Policy 11, as the same may be amended from time to time. Such reimbursements shall be considered Operation and Maintenance Expenses and paid from the Operation and Maintenance Expenses Budget.

Section 3.03 Decision-Making.

(a) Subject to Section 3.01(e), only incumbent members may vote on any action before the Binational Working Group.

(b) Subject to Section 3.01(e), four or more incumbent members of the Binational Working Group constitutes a quorum for the transaction of business.

inicial, el Grupo de Trabajo Binacional se reunirá con la frecuencia que el Presidente y el Vicepresidente conjuntamente consideren apropiada, pero en ningún caso menos de dos veces cada Año Fiscal a menos que un plazo menos frecuente sea aprobado por el Grupo Binacional de Trabajo. Las reuniones se llevarán a cabo en un momento y lugar razonables en el Condado de San Diego, Estado de California, Estados Unidos, o de manera virtual o telefónica, de conformidad con lo establecido en la legislación aplicable.

(b) El Presidente y el Vicepresidente prepararán el orden del día de cada reunión. El Presidente o Vicepresidente deberá distribuir un proyecto del orden del día a los miembros titulares, miembros suplentes y miembros asesores del Grupo Binacional de Trabajo por lo menos cinco (5) Días Hábiles antes de la reunión y harán que el orden del día se publique de conformidad con el Código de Gobierno de California, Secciones 54950 y siguientes, según pueda ser enmendado de vez en cuando. Las reuniones del Grupo de Trabajo Binacional se llevarán a cabo de conformidad con las leyes del Estado de California aplicables a dichas reuniones.

(c) Los miembros titulares de la SICT que asistan a una reunión del Grupo de Trabajo Binacional en calidad de miembros titulares, así como un máximo de dos miembros asesores mexicanos, recibirán el reembolso de sus gastos de viaje de conformidad con la Política 11 del Consejo de Administración de SANDAG, según la misma sea actualizada de tiempo en tiempo. Dichos reembolsos se considerarán Gastos de Operación y Mantenimiento, y se abonarán con cargo al Presupuesto de Gastos de Operación y Mantenimiento.

Sección 3.03 Toma de decisiones.

(a) Con sujeción a lo dispuesto en la Sección 3.01(e), solo los miembros titulares podrán votar sobre cualquier acción presentada al Grupo de Trabajo Binacional.

(b) Con sujeción a lo dispuesto en la Sección 3.01(e), el quórum para la tramitación de asuntos será de cuatro o más miembros titulares del Grupo de Trabajo Binacional.

(c) Subject to Section 3.01(e), in order to act on any item, the affirmative vote of the majority of the incumbent members present is required.

Section 3.04 Bylaws and Policies. The Binational Working Group shall adopt bylaws and may adopt ethics policies and other rules necessary to carry out its functions and responsibilities. Roberts Rules of Order shall apply to the conduct of meetings unless different procedures are adopted by the Binational Working Group.

Section 3.05 Staff Support Arrangements. The Binational Working Group may approve reasonable Binational Working Group staff support costs as proper Operations and Maintenance Expenses, which may be added to the Operations and Maintenance Expenses Budget annually, to provide reasonable administrative, technical, and professional support to the Binational Working Group, to enable it to carry out its duties.

ARTICLE IV BINATIONAL WORKING GROUP FUNCTIONS AND RESPONSIBILITIES

Section 4.01 Toll Operations. The Binational Working Group may perform the following functions and responsibilities in connection with toll operations:

- (a) Analyze vehicle Wait Times, and Toll rates, including minimum and maximum Tolls, minimum and maximum Toll increments and decrements, and price change time intervals;
- (b) Analyze and consider any current and new Toll Discounts, Toll Promotions, or Toll Exemptions;
- (c) Review and evaluate any Toll Overrides that were implemented;
- (d) Develop performance metrics for the Project related to traffic congestion management and traffic flow, and analyze and assess the Project's performance based on such metrics; and

(c) Sujeto a la Sección 3.01(e), para actuar sobre cualquier punto, se requiere el voto afirmativo de la mayoría de los miembros titulares presentes.

Sección 3.04 Estatutos y Políticas. El Grupo de Trabajo Binacional deberá adoptar estatutos, y podrá adoptar políticas de ética y otras reglas necesarias para llevar a cabo sus funciones y responsabilidades. Para la celebración de las reuniones se aplicarán las Normas de Orden de Roberts (*Roberts Rules of Order*), a menos de que el Grupo de Trabajo Binacional adopte procedimientos diferentes.

Sección 3.05 Disposiciones relativas al apoyo del personal. El Grupo de Trabajo Binacional podrá aprobar costos razonables de apoyo de personal del Grupo de Trabajo Binacional como Gastos de Operación y Mantenimiento propios, que podrán agregarse anualmente al Presupuesto de Gastos de Operación y Mantenimiento, para proporcionar apoyo administrativo, técnico y profesional razonable al Grupo Binacional de Trabajo, a fin de que pueda llevar a cabo sus funciones.

ARTÍCULO IV FUNCIONES Y RESPONSABILIDADES DEL GRUPO DE TRABAJO BINACIONAL

Artículo 4.01 Operaciones de Peaje. El Grupo de Trabajo Binacional podrá desempeñar las siguientes funciones y responsabilidades en relación con las operaciones de peaje:

- (a) Analizar los Tiempos de Espera de los vehículos, y las tarifas de Peaje, incluyendo Peajes mínimos y máximos, incrementos y decrementos de Peaje mínimos y máximos, e intervalos de tiempo de cambio de precio;
- (b) Analizar y considerar los Descuentos de Peaje, Promociones de Peaje y Exenciones de Peaje actuales y nuevos;
- (c) Revisar y evaluar cualesquiera Anulaciones de Peajes que se hayan implementado;
- (d) Desarrollar indicadores de rendimiento para el Proyecto relacionados con la gestión de la congestión y fluidez del tráfico, y analizar y evaluar el rendimiento del Proyecto basándose en dichos indicadores; y

(e) Based on the above consideration, analysis, and review, propose to SANDAG and/or the SANDAG Board of Directors (as appropriate) any changes to the Toll setting, Toll Policy, and/or Tolling Operations, that the Binational Working Group deems appropriate.

(f) Any other functions reasonably necessary or convenient for the performance of the functions and responsibilities enumerated in this Section 4.01, as agreed to by the Binational Working Group.

Section 4.02 Traffic and Revenue Studies. Subject to availability in the funds in the Operation and Maintenance Expenses Budget, the Binational Working Group may initiate Traffic and Revenue Studies and updates thereto when it deems advisable to inform the Binational Working Group's functions and responsibilities or to advise the Parties with regards to future expansion of the Project.

Section 4.03 Toll Policy and Toll Setting. The Binational Working Group will review and advise the SANDAG Board of Directors on Toll setting and the Toll Policy at least biennially or earlier if either Party requests, in accordance with Article V.

Section 4.04 Toll Collection, Distribution, Traffic Flow, and Congestion Management. The Binational Working Group will serve the following functions in connection with toll collection, distribution, traffic flow, and congestion management:

(a) Evaluating NADBank's performance under the Custodial Agreement no less than bi-annually and making any recommendations to SICT and/or SANDAG based on such evaluation;

(b) As needed, evaluating the performance of other vendors who are funded through the Operations and Maintenance Expenses Budget, and making recommendations to SANDAG as the contract manager based on such evaluation; and

(c) Evaluating SANDAG's performance of Operations and Maintenance functions and making recommendations to the SANDAG Toll Operator based on such evaluation.

(e) Con base en las consideraciones, análisis y la revisión anterior, proponer a SANDAG y/o al Consejo de Administración de SANDAG (según corresponda) cualquier cambio en la fijación de Peajes, la Política de Peajes y/o las Operaciones de Peaje, que el Grupo de Trabajo Binacional considere oportuno.

(f) Cualquier otra función razonablemente necesaria o conveniente para el desempeño de las funciones y responsabilidades enumeradas en la presente Sección 4.01, conforme a lo acordado por el Grupo de Trabajo Binacional.

Sección 4.02 Estudios de Tráfico e Ingresos. Sujeto a la disponibilidad de fondos en el Presupuesto de Gastos de Operación y Mantenimiento, el Grupo de Trabajo Binacional podrá iniciar Estudios de Tráfico e Ingresos y sus actualizaciones cuando lo considere conveniente para informar las funciones y responsabilidades del Grupo de Trabajo Binacional o para asesorar a las Partes respecto a la futura expansión del Proyecto.

Artículo 4.03 Política de Peajes y Fijación de Peajes. El Grupo de Trabajo Binacional revisará y asesorará al Consejo de Administración de SANDAG sobre la fijación de Peajes y la Política de Peajes por lo menos cada dos años o antes si alguna de las Partes lo solicita, de conformidad con el Artículo V.

Sección 4.04 Cobro de Peajes, Distribución, Flujo de Tráfico y Congestión de Tráfico. El Grupo de Trabajo Binacional desempeñará las siguientes funciones en relación con el cobro y reparto de peajes, flujo de tráfico y gestión de la congestión de tráfico:

(a) Evaluar el desempeño del NADBank bajo el Contrato de Depósito al menos dos veces al año y hacer cualquier recomendación a SICT y/o SANDAG basada en dicha evaluación;

(b) En caso necesario, evaluar el desempeño de otros proveedores financiados a través del Presupuesto de Gastos de Operaciones y Mantenimiento, y hacer recomendaciones a SANDAG como gestor del Acuerdo basándose en dicha evaluación; y

(c) Evaluar el desempeño por parte de SANDAG de las funciones de Operaciones y Mantenimiento y hacer recomendaciones al Operador de Peaje SANDAG basadas en dicha evaluación.

(d) Any other functions reasonably necessary or convenient for the performance of the functions and responsibilities enumerated in this Section 4.04, as agreed to by the Binational Working Group.

Section 4.05 Operations and Maintenance Expenses Budget. The Binational Working Group will serve the following budget-related functions:

(a) By September 15 preceding the applicable Fiscal Year, SANDAG shall prepare and submit a proposed Operations and Maintenance Expenses Budget for the next Fiscal Year to the Binational Working Group. The Binational Working Group will review, and in its case, modify or approve the budget or offer an amended budget by no later than January 15 prior to such Fiscal Year. The SANDAG Board of Directors will ratify such Budget (as approved or as amended) in the Annual SANDAG Program Budget.

(b) Notwithstanding subsection (a) of this Section, the SANDAG Board of Directors shall have the power to (i) amend the approved, offered or ratified Operations and Maintenance Expenses Budget, at any time, as and to the extent for the sole purpose required to avoid any default under the Indenture or TIFIA Loan Agreement relating to the Project, and (ii) amend the adopted Operations and Maintenance Expenses Budget in accordance with applicable SANDAG procedures and approvals upon a properly justified determination by the SANDAG Board or other official designated under SANDAG budgeting procedures that a material event or development or inaccurate assumption in the Operations and Maintenance Expenses Budget necessitates an amendment, but no such amendments under this clause (ii) shall increase, decrease or modify, the total Operations and Maintenance Expenses Budget by more than 7.5% (cumulatively for the applicable Fiscal Year) of the Operations and Maintenance Expenses Budget last adopted by the Binational Working Group.

(c) Nothing in this Agreement limits SANDAG in expending legally available funds other than Toll

(d) Cualquier otra función razonablemente necesaria o conveniente para el desempeño de las funciones y responsabilidades enumeradas en la presente Sección 4.04, conforme a lo acordado por el Grupo de Trabajo Binacional.

Sección 4.05 Presupuesto de Gastos de Operación y Mantenimiento. El Grupo de Trabajo Binacional desempeñará las siguientes funciones relacionadas con el presupuesto:

(a) A más tardar el 15 de septiembre anterior al Año Fiscal aplicable, SANDAG preparará y presentará al Grupo de Trabajo Binacional una propuesta de Presupuesto de Gastos de Operación y Mantenimiento para el siguiente Año Fiscal. El Grupo de Trabajo Binacional revisará, y en su caso, modificará o aprobará el presupuesto u ofrecerá un presupuesto modificado a más tardar el 15 de enero previo a dicho Año Fiscal. El Consejo de Administración de SANDAG ratificará dicho Presupuesto (aprobado o modificado) en el Presupuesto del Programa Anual de SANDAG.

(b) No obstante el subapartado (a) anterior, el Consejo de Administración de SANDAG tendrá la facultad de (i) modificar el Presupuesto de Gastos de Operación y Mantenimiento aprobado, ofrecido o ratificado, en cualquier momento, en la medida en que sea necesario únicamente para evitar cualquier incumplimiento al Contrato de Fideicomiso o del Contrato de Crédito TIFIA relativas al Proyecto, y (ii) modificar el Presupuesto de Gastos de Operación y Mantenimiento adoptado de acuerdo con los procedimientos y aprobaciones aplicables de SANDAG tras la determinación justificada por parte del Consejo de SANDAG u otro funcionario designado en virtud de los procedimientos presupuestarios de SANDAG que un acontecimiento material o desarrollo o suposición inexacta en el Presupuesto de Gastos de Operación y Mantenimiento requiere una modificación, pero ninguna de dichas modificaciones en virtud de este inciso (ii) aumentará, disminuirá o modificará el Presupuesto total de Gastos de Operación y Mantenimiento en más del 7.5% (acumulado para el Ejercicio Fiscal aplicable) del Presupuesto de Gastos de Operación y Mantenimiento adoptado por el Grupo de Trabajo Binacional.

(c) Nada de lo dispuesto en el presente Acuerdo limita a SANDAG en gastar fondos legalmente

Revenues on Operations and Maintenance Expenses, in accordance with applicable legislation, however, SICT shall be under no obligation or responsibility hereunder to contribute to, or reimburse SANDAG, or in any other way, compensate expenditures made from such other funds.

(d) For purposes of subsections (a), (b), and (c) of this Section, Operations and Maintenance Expenses can include:

- i. Operation and Maintenance Expenses as defined in the Toll Allocation Agreement and the ITS Agreement;
- ii. All reasonable and documented current expenses incurred and paid or payable by SANDAG for operations, maintenance, service, repair, and replacement costs for the Roadway Toll Collection System and the Toll Transaction Location (including toll readers and related equipment located within Mexican territory), and such other expenses mutually agreed to by the Parties; and
- iii. The administration, processing, accounting, collection, enforcement, and marketing related to the Roadway Toll Collection System and/or Toll Revenues;

Section 4.06 Studies and Analysis. Subject to availability of budgeted funds, the Binational Working Group may initiate and review studies, analyses, audits, and evaluation that are necessary or convenient to inform the Binational Working Group in performing its responsibilities noted above.

ARTICLE V TOLL SETTING AND TOLL POLICY

Section 5.01 Toll Policy Principles. The Toll Policy will address meeting service and performance standards relating to traffic flow and congestion, Wait Times, greenhouse gas emissions and air pollutant emissions, revenue requirements, or such other matter deemed appropriate by the SANDAG Board of Directors, upon the advice of the Binational Working Group. The Toll

disponibles distintos de los Ingresos de Peaje en Gastos de Operación y Mantenimiento, de conformidad con la legislación aplicable, sin embargo, SICT no tendrá ninguna obligación ni responsabilidad en virtud del presente Acuerdo de contribuir a, o reembolsar a SANDAG o, de cualquier otra forma, compensar los gastos realizados con dichos otros fondos.

(d) A efectos de los subapartados (a), (b) y (c) de esta Sección, los Gastos de Operación y Mantenimiento pueden incluir:

- i. Gastos de Operación y Mantenimiento, tal y como se definen en el Acuerdo de Distribución de Ingresos y en el Acuerdo ITS;
- ii. Todos los gastos corrientes, razonables y documentados incurridos y pagados o pagaderos por SANDAG en concepto de operaciones, mantenimiento, servicio, reparación y costes de sustitución del Sistema de Cobro de Peaje en Autopista y de la Zona de Cobro del Peaje (incluyendo los lectores de peaje y equipo relacionado ubicados dentro del territorio mexicano), así como otros gastos acordados mutuamente por las Partes; y
- iii. La administración, tramitación, contabilidad, recaudación, aplicación y comercialización relacionadas con el Sistema de Cobro de Peaje en Autopista y/o los Ingresos por Peaje.

Sección 4.06 Estudios y Análisis. Sujeto a la disponibilidad de fondos presupuestales, el Grupo de Trabajo Binacional podrá iniciar y revisar estudios, análisis, auditorías y evaluaciones que sean necesarios o convenientes para informar al Grupo de Trabajo Binacional en el desempeño de sus responsabilidades antes señaladas.

ARTÍCULO V FIJACIÓN DE PEAJES Y POLÍTICA DE PEAJES

Sección 5.01 Principios de la Política de Peaje. La Política de Peaje abordará el cumplimiento de las normas de servicio y rendimiento relacionadas con el flujo y la congestión del tráfico, los Tiempos de Espera, las emisiones de gases de efecto invernadero y de emisiones contaminantes atmosféricas, requisitos de ingresos, o cualquier otro asunto que el Consejo de

Policy shall always be consistent with applicable law, including the OME Toll Facility Act. Nothing in the Toll Policy shall impair SANDAG's ability to meet its obligations with respect to debt service, funding of reserves and maintenance of coverage ratios and other covenants in its financing documents relating to the Toll Road.

Section 5.02 Initial Toll Policy. The initial Toll Policy will be presented to the SANDAG Board of Directors for adoption after or concurrently with the authorization and approval of the ITS Agreement. The Toll Policy shall be subject to later revision as described herein.

Section 5.03 Toll Setting. SANDAG, through its Board of Directors, shall set the Toll, in accordance with applicable law. The Binational Working Group shall advise the SANDAG Board of Directors on Toll setting, which advice shall take into account service and performance standards and financial metrics as the Binational Working Group shall deem appropriate.

Section 5.04 Toll Setting Advisory Position. The appropriate representative from SICT shall have an advisory position on the SANDAG Board of Directors, without prejudice to the position currently held by the representative of the Ministry of Foreign Affairs (SRE), in accordance with the Toll Allocation Agreement, to advise on such Toll setting.

Section 5.05 Toll Setting Report. The Binational Working Group's advice prepared under this Article shall be transmitted to the SANDAG Board of Directors in the form of a written report adopted by the Binational Working Group at a meeting thereof, with a copy to SICT. Such reports may be prepared from time to time as the Binational Working Group may determine or upon the request of SICT or SANDAG, but not less than biennially. Such reports from the Binational Working Group shall be submitted to the SANDAG Board of Directors as it deliberates on toll setting actions.

Administración de SANDAG considere oportuna, de conformidad con la asesoría que reciba del Grupo de Trabajo Binacional. La Política de Peaje siempre será coherente con la legislación aplicable, incluida la Ley de Instalaciones de Peaje de OME (*OME Toll Facility Act*). Nada de lo dispuesto en la Política de Peaje afectará la capacidad de SANDAG para el cumplimiento de sus obligaciones con respecto al servicio de la deuda, el financiamiento de las reservas y el mantenimiento de los índices de cobertura y otros acuerdos en sus documentos de financiamiento relativos a la Autopista de Peaje.

Sección 5.02 Política de Peaje inicial. La Política de Peaje inicial se presentará al Consejo de Administración de SANDAG para su adopción después de o simultáneamente con la autorización y aprobación del Acuerdo ITS. La Política de Peajes estará sujeta a revisiones posteriores según se describe en el presente.

Artículo 5.03 Fijación del peaje. SANDAG, a través de su Consejo de Administración, fijará el Peaje, de conformidad con la ley aplicable. El Grupo de Trabajo Binacional asesorará al Consejo de Administración de SANDAG en la fijación del Peaje, asesoría que tomará en cuenta los estándares de servicio y desempeño, así como las métricas financieras que el Grupo de Trabajo Binacional considere apropiadas.

Artículo 5.04 Posición Consultiva en la Fijación de Peajes. El representante apropiado de SICT tendrá una posición consultiva en el Consejo de Administración de SANDAG, sin perjuicio de la posición actualmente le corresponde al representante de la Secretaría de Relaciones Exteriores (SRE), de conformidad con el Acuerdo de Distribución de Ingresos, para asesorar sobre dicha fijación de peaje.

Artículo 5.05 Informe sobre la fijación de peajes. La asesoría del Grupo de Trabajo Binacional preparada conforme a este Artículo será transmitida al Consejo de Administración de SANDAG en la forma de un informe escrito adoptado por el Grupo de Trabajo Binacional en una reunión del mismo, con copia a SICT. Dichos informes podrán ser preparados de tiempo en tiempo según lo determine el Grupo de Trabajo Binacional o a petición de SICT o SANDAG, pero no en un tiempo menor a dos años. Dichos informes del Grupo de Trabajo Binacional se presentarán al Consejo de

Section 5.06 Notice of Toll Setting Hearings. SANDAG shall provide to the Binational Working Group a copy of any notice of hearing regarding toll setting under Section 31476 of the California Government Code.

ARTICLE VI DISPUTE RESOLUTION

Section 6.01 Scope.

(a) The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of a matter that might affect its operation or application.

(b) The dispute settlement provisions of this Article VI shall apply (i) with respect to the avoidance or settlement of disputes between the Parties regarding the interpretation or application of this Agreement or (ii) when either of the Parties considers that an actual or proposed action of the other Party would be inconsistent with an obligation of this Agreement or that an actual or proposed inaction of the other Party would constitute failure to carry out an obligation of this Agreement.

Section 6.02 Consultations.

(a) The Parties may request consultations with respect to any matter described in subsection (b) Section 6.01 above. Such request shall be in writing, and shall set out the reasons for the request, including identification of the specific action, inaction or other matter at issue and an indication of the legal basis for the complaint. Unless the Parties decide otherwise, they shall enter into consultations no later than fifteen (15) Business Days after the date of delivery of the request therefor.

(b) The Parties shall make every attempt to arrive at a mutually satisfactory resolution of a matter through consultations under this Section 6.02. To this end: (i)

Administración de SANDAG cuando delibere sobre acciones de fijación de peajes.

Artículo 5.06 Notificación de Audiencias para el Establecimiento de Peajes. SANDAG proporcionará al Grupo de Trabajo Binacional una copia de cualquier notificación de audiencia relacionada con la fijación de peajes conforme a la Sección 31476 del Código de Gobierno de California.

ARTÍCULO VI RESOLUCIÓN DE CONTROVERSIAS

Sección 6.01 Alcance.

(a) Las Partes deberán, en todo momento, esforzarse para alcanzar un acuerdo sobre la interpretación y aplicación del presente Acuerdo, y harán todo lo posible para alcanzar una solución mutuamente satisfactoria sobre cualquier asunto que pueda afectar su funcionamiento o aplicación, a través de la cooperación y las consultas.

(b) Las disposiciones sobre solución de controversias previstas en el presente Artículo VI se aplicarán (i) en relación con la prevención o solución de controversias entre las Partes respecto de la interpretación o aplicación del presente Acuerdo; o (ii) cuando alguna de las Partes considere que una acción real o propuesta por la otra Parte sea incompatible con una obligación prevista en el presente Acuerdo o que una omisión real o propuesta por la otra Parte pueda constituir un incumplimiento de las obligaciones previstas en el presente Acuerdo.

Sección 6.02 Consultas.

(a) Las Partes podrán solicitar consultas con respecto a cualquier asunto descrito en el subapartado (b) de la Sección 6.01 anterior. Dicha solicitud se hará por escrito y establecerá los motivos de la consulta, incluyendo la identificación de la acción específica, la inacción o cualquier otro asunto, así como el fundamento legal de la controversia. Salvo decisión en contrario de las Partes, se celebrarán las consultas a más tardar quince (15) Días Hábiles posteriores a la fecha de entrega de la solicitud correspondiente.

(b) Las Partes harán todo lo posible por llegar a una resolución mutuamente satisfactoria de un asunto mediante las consultas conforme a esta Sección 6.02.

the Party requesting consultations shall provide sufficient information to enable a full examination of how the actual or proposed action, inaction or other matter at issue might affect the operation of application of this Agreement; (ii) all participants in such consultations shall treat the information exchanged in the course of consultations that is designated as confidential on the same basis as the Party providing the information; and (iii) the Parties shall seek to avoid a resolution that adversely affects the interests of the other under this Agreement.

Section 6.03 Alternative Dispute Resolution.

The Parties may initiate at any time to voluntarily undertake an alternative method of dispute resolution, such as good offices, conciliation or mediation. Proceedings that involve good offices, conciliation or mediation shall be confidential and without prejudice to the rights of the Parties in another proceeding. SICT and SANDAG proceeding under this Section 6.03 may suspend or terminate those proceedings. If the Parties so decide, good offices, conciliation or mediation may continue while a dispute proceeds for resolution before a panel established under Section 6.04.

Section 6.04 Establishment of Panel.

(a) If the Parties fail to resolve the matter within thirty (30) Business Days after the date of delivery of the request for consultations described in subsection (a) of Section 6.02 hereof, or such other period as the Parties may decide, then either Party may request the establishment of a panel by means of a written notice delivered to the other, and shall include in such request an identification of the measure or other matter at issue and a brief summary of the legal basis of the complaint sufficient to present the issue clearly. Upon delivery of such request, a panel shall be established to be composed of the panelists described in subsection (b) of Section 6.04 below.

(b) The panel shall comprise three members. One panelist shall be selected by SICT, one panelist shall be selected by SANDAG and one panelist shall be selected by NADBank pursuant to the Custodial Agreement.

En este sentido: (i) la Parte que solicite las consultas proporcionará información suficiente para permitir un examen completo de cómo la acción, omisión u otro asunto en cuestión, real o propuesto, podría afectar la aplicación del presente Acuerdo; (ii) todos los participantes en las consultas tratarán la información intercambiada durante el curso de las consultas, que se designe como confidencial sobre la misma base que la Parte que proporcione dicha información; y (iii) las Partes buscarán evitar una solución que afecte negativamente los intereses de la otra Parte conforme al presente Acuerdo.

Sección 6.03 Solución Alternativa de Controversias.

Las Partes podrán iniciar en cualquier momento, de manera voluntaria, un método alternativo de solución de controversias, como los buenos oficios, la conciliación o la mediación. Los procedimientos que involucren buenos oficios, conciliación o mediación serán confidenciales y sin perjuicio de los derechos de las Partes en otro procedimiento de conformidad con esta Sección 6.03, las Partes pueden suspender o dar por terminados dichos procedimientos. Si las Partes así lo deciden, los buenos oficios, la conciliación o la mediación pueden continuar mientras una controversia se encuentre en proceso de solución ante un panel conformado en los términos de la Sección 6.04.

Sección 6.04 Establecimiento del Panel.

(a) Si las Partes no resuelven el asunto dentro de los treinta (30) Días Hábiles siguientes a la fecha de entrega de la solicitud de consultas descrita en la Sección 6.02, subapartado (a) anterior, o dentro de cualquier otro plazo que las Partes decidan, entonces cualquiera de las Partes podrá solicitar el establecimiento de un panel, mediante notificación escrita entregada a la otra Parte, e incluirá en dicha solicitud una identificación de la medida u otro asunto en cuestión, así como un breve resumen de los fundamentos jurídicos de la controversia, que se consideren suficientes para presentar el problema con claridad. Tras la entrega de dicha solicitud, se establecerá un panel compuesto por los panelistas descritos en la Sección 6.04, subapartado (b) siguiente.

(b) El panel estará integrado por tres miembros. Un panelista será seleccionado por la SICT, un panelista será seleccionado por SANDAG y un panelista será seleccionado por NADBank de conformidad con el

Each panelist shall be selected on the basis of objectivity, reliability and sound judgment. The panelist selected by NADBank shall chair the panel.

(c) If a panelist resigns, is removed or becomes unable to serve, the time frames applicable to the panel's proceedings shall be suspended until a replacement is appointed and shall be extended by the amount of time that the work was suspended. Such appointment shall be made within the following fifteen (15) Business Days in accordance with the method used to select such panelist pursuant to subsection (b) of Section 6.04 hereof.

Section 6.05 Panel Proceedings; Panel Report.

(a) The Parties shall have the right to at least one hearing before the panel at which each Party may present views orally, and each may provide an initial and a rebuttal written submission. The panel shall protect the confidentiality of information designated as confidential. Written submissions and oral arguments shall be made in one of the languages of the Parties, unless the Parties decide otherwise.

(b) The panel's function shall be to make an objective assessment of the matter before it and to present a report that contains (i) findings of fact, (ii) determinations as to whether the action, inaction or other matter at issue is inconsistent with the obligations in this Agreement or whether either Party has otherwise failed to carry out its obligations in this Agreement, (iii) recommendations for the resolution of the dispute and (iv) the reasons for the findings and determinations.

(c) The panel shall interpret this Agreement in accordance with customary rules of interpretation of public international law. Panel determination shall be unanimous, except that if the panel is unable to reach consensus, it may take its decision by majority vote.

(d) The panel shall present an initial report no later than sixty (60) Business Days after the date of the appointment of the last panelist. The Parties may submit written comment to the panel on its initial report no later than fifteen (15) Business Days after the presentation of the initial report or within another

Contrato de Depósito. Cada panelista será seleccionado sobre la base de su objetividad, confiabilidad y buen juicio. El panelista designado por NADBank presidirá el panel.

(c) Si un panelista renuncia, es destituido o está imposibilitado de prestar sus servicios, los plazos aplicables a los procedimientos se suspenderán hasta que se nombre un reemplazo y se prorrogarán por el tiempo que estuvo suspendido el procedimiento. Dicho nombramiento deberá hacerse en los quince (15) Días Hábiles siguientes, con el método usado para seleccionar dicho panelista de conformidad con la Sección 6.04, subapartado (b) del presente Acuerdo.

Sección 6.05 Procedimientos del Panel; Informe del Panel.

(a) Las Partes tendrán el derecho de al menos una audiencia ante el panel en donde las Partes podrán presentar sus puntos de vista de forma verbal, y cada una podrá presentar un escrito inicial y una réplica. El panel protegerá la confidencialidad de la información clasificada como confidencial. Los escritos y los argumentos orales se realizarán en uno de los idiomas de las Partes, salvo decisión en contrario de las Partes.

(b) La función del panel es evaluar objetivamente el asunto en cuestión y presentar un informe que contenga (i) determinaciones de hecho, (ii) determinaciones sobre si la acción, omisión u otro asunto relevante es inconsistente con las obligaciones previstas en el presente Acuerdo o si las Partes han incumplido de alguna manera sus obligaciones de conformidad con el presente Acuerdo, (iii) recomendaciones para la solución de la controversia y (iv) las razones de los hallazgos y determinaciones.

(c) El panel interpretará el presente Acuerdo de conformidad con las reglas consuetudinarias de interpretación de derecho internacional público. Las determinaciones del panel deberán ser unánimes, salvo cuando no se pueda llegar a un consenso, la decisión se tomará por mayoría de votos.

(d) El panel presentará un informe inicial a más tardar sesenta (60) Días Hábiles posteriores a la fecha de designación del último panelista. Las Partes podrán presentar comentarios por escrito al panel sobre su informe inicial a más tardar quince (15) Días Hábiles después de la presentación del informe inicial o dentro

period as the Parties may decide. After considering such comments, the panel, on its own initiative or at the request of either Party, may (i) request the views of the other Party, (ii) reconsider its report or (iii) make such further examination as it considers appropriate. The panel shall present a final report no later than thirty (30) Business Days after presentation of the initial report, unless the Parties decide otherwise.

(e) Within thirty (30) Business Days from receipt of a final report that contains findings that (i) the action, inaction or other measure at issue is inconsistent with the obligations of either Party in this Agreement, or (ii) either Party has otherwise failed to carry out its obligations in this Agreement, the Parties shall endeavor to agree on the resolution of the dispute.

ARTICLE VII GENERAL PROVISIONS

Section 7.01 Effective Date. This Agreement shall become effective on the date it is duly executed by both Parties and each of the Parties receives an original counterpart, duly executed.

Section 7.02 Term. The term of this Agreement shall commence on the Effective Date and terminate on the termination date of the Toll Allocation Agreement.

Section 7.03 Further Assurances.

(a) In order to assist SANDAG with satisfying its obligations under the Indenture, the TIFIA Loan Agreement or federal securities laws of the United States of America, the Mexican Representative (and/or the duly authorized officer(s) of SICT, in accordance with the provisions of paragraph (b) of Section 1.03 hereof) will make its best efforts to provide any information, execute and deliver any documents or take any other actions reasonably requested by SANDAG. Moreover, in order to assist SICT with satisfying its credit, transparency, or any other obligations required under the field of information, the SANDAG Representative, in accordance with the provisions of paragraph (c) of Section 1.03 hereof, will make its best efforts to provide any information, execute and deliver

de otro plazo que las Partes decidan. Después de considerar dichos comentarios, el panel, por iniciativa propia o a solicitud de alguna de las Partes, podrá (i) solicitar las opiniones de la otra Parte, (ii) reconsiderar su informe o (iii) realizar una investigación más a profundidad, según lo considere pertinente. El panel presentará un informe final a más tardar treinta (30) Días Hábiles después de la presentación del informe inicial, a menos que las Partes decidan lo contrario.

(e) Dentro de los treinta (30) Días Hábiles siguientes a la recepción del informe final que contenga la determinación sobre (i) la acción, omisión u otra medida incompatible con las obligaciones de las Partes de conformidad con el presente Acuerdo, o (ii) alguna de las Partes ha incumplido con sus obligaciones previstas en el presente Acuerdo, las Partes se esforzarán por alcanzar un acuerdo sobre la solución de la controversia.

ARTÍCULO VII DISPOSICIONES GENERALES

Sección 7.01 Fecha de Entrada en Vigor. El presente Acuerdo entrará en vigor en la fecha en que sea debidamente firmado por ambas Partes y cada una de las Partes reciba un ejemplar original debidamente firmado.

Sección 7.02 Vigencia. La vigencia del presente Acuerdo comenzará en la Fecha de Entrada en Vigor y finalizará en la fecha de terminación del Acuerdo de Distribución de Ingresos.

Sección 7.03 Garantías Adicionales.

(a) Con el fin de ayudar a SANDAG a cumplir con sus obligaciones bajo el Contrato de Fideicomiso, el Contrato de Crédito TIFIA o las leyes federales de valores de los Estados Unidos de América, el Representante Mexicano (y/o el/los servidor(es) público(s) debidamente autorizado(s) de la SICT, de conformidad con lo previsto en la Sección 1.03, inciso (b) del presente Acuerdo) hará sus mejores esfuerzos para proporcionar cualquier información, firmará y entregará cualquier documento o realizará las acciones razonablemente solicitadas por SANDAG. Asimismo, con el fin de ayudar a la SICT a cumplir con sus obligaciones crediticias, de transparencia o cualquier otra que se le requiera en el ámbito de información, el Representante SANDAG, de conformidad con lo

any documents or take any other action reasonably requested by SICT.

(b) In connection with the foregoing, SICT shall deliver to SANDAG, promptly after the Effective Date of this Agreement a legal opinion at SANDAG's expense, of outside counsel to SICT selected by SICT addressing the enforceability of this Agreement against SICT, in form and substance reasonably satisfactory to SANDAG.

Likewise, SANDAG shall deliver to SICT, promptly after the Effective Date of this Agreement, a legal opinion at SANDAG's expense, of outside counsel to SANDAG selected by SANDAG addressing the enforceability of this Agreement against SANDAG, in form and substance reasonably satisfactory to SICT.

(c) Under no reason or circumstance shall SICT be liable with respect to any payment obligations of SANDAG under the TIFIA Loan Agreement, the Indenture and/or the Bonds. SANDAG undertakes to keep SICT, including the Mexican Representative (and/or the duly authorized officers of each of the Mexican parties to the 2021 MOU) (collectively, the "Indemnified Parties") free from any claim, lawsuit, complaint, proceeding, investigation, or action in connection with the TIFIA Loan Agreement, the Indenture and/or the Bonds to the extent caused by or arising from any acts or omissions of SANDAG; provided, however, that SANDAG shall not be required to hold harmless and indemnify any of the Indemnified Parties for any such claim, lawsuit, complaint, proceeding, investigation or action, but only if it is determined by a court with jurisdiction over the matter to have been caused by or arising from the negligence, recklessness, breach of contract, or willful misconduct of such Indemnified Party.

Section 7.04 Lawfully Binding Agreement. This Agreement is legally binding on the Parties. Each Party hereby accepts and recognizes its obligations and rights hereunder, being legally enforceable at law or in equity.

previsto en la Sección 1.03, inciso (c) del presente Acuerdo, hará sus mejores esfuerzos para proporcionar cualquier información, firmará y entregará cualquier documento o realizará las acciones razonablemente solicitadas por la SICT.

(b) En virtud de lo anterior, SICT entregará a SANDAG, inmediatamente después de la Fecha de Entrada en Vigor del presente Acuerdo, una opinión legal, con cargo y a costo de SANDAG, de un asesor legal externo de SICT y seleccionado por SICT respecto la oponibilidad de este Acuerdo contra SICT, en forma y sustancia razonablemente satisfactoria para SANDAG.

Asimismo, SANDAG entregará a la SICT inmediatamente después de la Fecha de Entrada en Vigor del presente Acuerdo, una opinión legal, con cargo y a costo de SANDAG, de un asesor legal externo de SANDAG y seleccionado por SANDAG respecto la oponibilidad de este Acuerdo contra SANDAG, en forma y sustancia razonablemente satisfactoria para la SICT.

(c) La SICT no será responsable, bajo ninguna razón o circunstancia, de las obligaciones de pago que asuma SANDAG al amparo del Contrato de Crédito TIFIA, el Contrato de Fideicomiso y/o de los Bonos. Asimismo, SANDAG se obliga a liberar a la SICT, incluyendo al Representante Mexicano (y/o los servidores públicos debidamente autorizados de las partes mexicanas en el MOU 2021) (referidas colectivamente como "Partes Indemnizadas"), de cualquier reclamo, demanda, denuncia, proceso, investigación, o acción de cualquier naturaleza realizada en relación con el Contrato de Crédito TIFIA, el Contrato de Fideicomiso y/o de los Bonos y SANDAG; en el entendido, sin embargo, que SANDAG no estará obligada a liberar de responsabilidad e indemnizar a ninguna de las Partes Indemnizadas por algún reclamo, demanda, queja, procedimiento, investigación o acción, en la medida que un tribunal con jurisdicción sobre el asunto determine de manera definitiva que haya sido causada por negligencia, imprudencia, incumplimiento de contrato o mala fe de las Partes Indemnizadas.

Sección 7.04 Acuerdo Jurídicamente Vinculante. El presente Acuerdo es jurídicamente vinculante para las Partes. Cada Parte acepta y reconoce sus obligaciones

Section 7.05 No Liability. Neither Party shall be liable for the acts or omissions of the other Party.

Section 7.06 Waivers. No waiver of any provision of this Agreement requested by either Party shall be valid without the prior written consent of the other Party.

Section 7.07 Amendments. No amendment or modification of any provision of this Agreement shall be valid without the written agreement of both Parties. In addition, no amendment or modification of Section 1.03(d) or Articles III, IV or V of this Agreement that will materially affect the rights, privileges or duties of Caltrans hereunder shall be valid without the written agreement of both Parties and Caltrans. Caltrans shall be an express third-party beneficiary of the provisions of Section 1.03(d) and Articles III, IV and V of this Agreement.

Section 7.08 No Assignment. Neither Party may assign any of the rights, obligations or other provisions of this Agreement.

Section 7.09 Applicable Law. This Agreement shall be interpreted consistent with all applicable laws, and actions taken hereunder shall be subject to, and shall be performed in accordance with, all applicable laws. The obligations of SANDAG under this Agreement shall be governed by the laws of the State of California, and the obligations of SICT under this Agreement shall be governed by the laws of Mexico.

Section 7.10 Execution in Counterparts. This Agreement will be executed in 2 (two) original counterparts, each one in both English and Spanish, which both shall be deemed authentic and all of which taken together shall constitute one and the same instrument.

y derechos en virtud del mismo, siendo jurídicamente exigible en derecho o equidad.

Sección 7.05 Ausencia de Responsabilidad. Ninguna de las Partes será responsable de los actos u omisiones de la otra Parte.

Sección 7.06 Renuncias. Ninguna renuncia a cualquier disposición del presente Acuerdo que sea solicitada por cualquiera de las Partes será válida sin el consentimiento previo por escrito de la otra Parte.

Sección 7.07 Modificaciones. Ninguna enmienda o modificación de cualquier disposición del presente Acuerdo será válida sin el acuerdo escrito de ambas Partes. Además, ninguna enmienda o modificación de la Sección 1.03(d) o de los Artículos III, IV o V de este Acuerdo que afecte materialmente los derechos, privilegios o deberes de Caltrans en virtud del presente Acuerdo será válidas sin el acuerdo escrito de ambas Partes y Caltrans. Caltrans será expresamente un tercero beneficiario respecto de las disposiciones de la Sección 1.03(d) y de los Artículos III, IV y V del presente Acuerdo.

Sección 7.08 No Cesión. Ninguna de las Partes podrá ceder ninguno de los derechos, obligaciones u otras disposiciones previstas en el presente Acuerdo.

Sección 7.09 Ley Aplicable. El presente Acuerdo se interpretará de conformidad con todas las leyes aplicables, y las acciones que se adopten en virtud del mismo estarán sujetas y se ejecutarán de conformidad con todas las leyes aplicables. Las obligaciones de SANDAG conforme al presente Acuerdo se registrarán por las leyes del Estado de California, y las obligaciones de la SICT conforme al presente Acuerdo, se registrarán por las leyes de México.

Sección 7.10 Ejemplares. Este Acuerdo se suscribirá en 2 (dos) ejemplares originales, cada uno en los idiomas español e inglés, siendo ambos textos igualmente auténticos, y todos en conjunto constituirán un único y mismo instrumento.

[SIGNATURE SHEET FOLLOWS / CONTINUA HOJA DE FIRMAS]

SECRETARÍA DE INFRAESTRUCTURA, COMUNICACIONES Y TRANSPORTES DE LOS ESTADOS UNIDOS MEXICANOS

By / Por: _____
Name / Nombre: Jorge Nuño Lara
Title / Cargo: Minister / Ministro
Date Signed / Fecha de Firma: _____

SAN DIEGO ASSOCIATION OF GOVERNMENTS

By / Por: _____
Name / Nombre: Mario Orso
Title / Cargo: Chief Executive Officer / Presidente Ejecutivo
Date Signed / Fecha de Firma: _____

Witnessed by the [Chair] [Vice-Chair] of the / Con la comparecencia del [Presidente] [Vicepresidente] de:

SAN DIEGO ASSOCIATION OF GOVERNMENTS

By / Por: _____
Name / Nombre: _____
Title / Cargo: [Chair / Presidente] [Vice-Chair / Vicepresidente]
Date Signed / Fecha de Firma: _____

Witnessed by the / Con la comparecencia de:
STATE OF CALIFORNIA

By / Por: _____
Name / Nombre: _____
Title: _____
Date Signed: _____

Witnessed by the / Con la comparecencia de:
NORTH AMERICAN DEVELOPMENT BANK

By: _____
Name: _____
Title: _____
Date Signed: _____

(Signature sheet to the Agreement Concerning Toll Governance Relating to the New International Border Crossing and Port Mesa de Otay II - Otay Mesa East / Hoja de firmas del Acuerdo Relativo al Cobro de Peaje del Nuevo Cruce y Puerto Fronterizo Internacional Mesa de Otay II - Otay Mesa East)

[PAGE RESERVED FOR ADDITIONAL WITNESS SIGNATURES / PÁGINA RESERVADA PARA FIRMAS DE TESTIGOS ADICIONALES]

DRAFT



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Phone (619) 699-1900
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sandag.org

Resolution No. 2024-32

Approving and Authorizing the Execution and Delivery of the Relevant Agreements

WHEREAS, the San Diego Association of Governments (“SANDAG”) is a consolidated regional transportation agency organized and existing pursuant to the San Diego Regional Transportation Consolidation Act, being Chapter 3 of Division 12.7 of the Public Utilities Code of the State of California (Section 132350 et seq.); and

WHEREAS, SANDAG is authorized by Sections 31474 et seq. of the Streets and Highways Code of the State of California (as amended, the “Toll Facility Act”) to impose tolls along State Route 11 (“SR-11”), which will connect with a new international border crossing and port facility between the United States and Mexico known as Otay Mesa East on the U.S. side of the border, in the County of San Diego, and Mesa de Otay II on the Mexico side of the border (collectively, the “Project”); and

WHEREAS, the Toll Facility Act was amended by the enactment of Senate Bill No. 985 (Hueso) (“SB 985”), which was signed by the Governor on September 18, 2022, and which took effect, pursuant to Article IV, Section 8 of the California Constitution, on January 1, 2023; and

WHEREAS, SB 985 authorizes SANDAG, among other things, to contract with one or more of the federal government of Mexico or a governmental agency or unit thereof, to provide for (i) toll collection to one side of the Otay Mesa East Port of Entry, (ii) the equitable allocation of toll revenues and (iii) the equitable allocation and financing of the operating, maintenance and capital costs of the Project; and

WHEREAS, SANDAG has heretofore entered into a Memorandum of Understanding with the Ministry of Foreign Affairs, the Ministry of Infrastructure, Communications and Transport and the Ministry of Finance and Public Credit of the United Mexican States, the California State Transportation Agency and the California Department of Transportation with respect to the Mesa de Otay II – Otay Mesa East Border Crossing and Port and Access Roads to those Facilities, signed on June 28, 2021 (the “2021 MOU”); and

WHEREAS, the 2021 MOU memorialized the shared intention of the parties thereto to cooperate in the development of the Project and to work collaboratively to implement a traffic congestion management and revenue collection strategy based on variable tolling, with tolls collected for both northbound and southbound traffic by way of a single collection point to be located on SR-11; and

WHEREAS, pursuant to the 2021 MOU, on October 24, 2022, SANDAG and the Ministry of Infrastructure, Communications and Transport of the United Mexican States (“SICT”) entered into an Agreement Concerning the Sharing of Toll Revenues relating to the New International Border Crossing Mesa de Otay II – Otay Mesa East (the “Original Agreement”); and

WHEREAS, in order to meet the requirements of the Federal Highway Administration and applicable law, SANDAG and SICT find it necessary and desirable to amend and restate the Original Agreement in its entirety, pursuant to an Amended and Restated Agreement Concerning the Collection and Allocation of Toll Revenues relating to the New International Border Crossing and Port Mesa de Otay II – Otay Mesa East (the “Toll Allocation Agreement”); and

WHEREAS, a proposed form of the Toll Allocation Agreement between SANDAG and SICT has been prepared and presented to SANDAG; and

WHEREAS, the Toll Allocation Agreement contemplates the North American Development Bank ("NADBank") serving as custodian of toll revenues generated by the Project pursuant to a custodial agreement (the "Custodial Agreement"), undertaking certain functions described in the Toll Allocation Agreement; and

WHEREAS, a proposed form of the Custodial Agreement among NADBank, SICT and SANDAG has been prepared and presented to SANDAG; and

WHEREAS, under the Toll Allocation Agreement, SICT and SANDAG contemplate entering into an agreement (the "Toll Governance Agreement") to establish a Binational Working Group made up of members selected by SANDAG and SICT, and to set forth the governance process and functions of the Binational Working Group; and

WHEREAS, a proposed form of the Toll Governance Agreement between SANDAG and SICT has been prepared and presented to SANDAG; and

NOW THEREFORE BE IT RESOLVED,

Section 1. SANDAG finds and determines that the foregoing recitals are true and correct and makes them an effective part of this Resolution by incorporating them herein by reference.

Section 2. The proposed form of the Toll Allocation Agreement presented to this meeting and the terms and conditions thereof are hereby approved. Each of the Chief Executive Officer or his designee, acting singly (each, an "Authorized Officer"), is hereby authorized and directed, for and in the name and on behalf of SANDAG, to execute and deliver the Toll Allocation Agreement, in substantially said form, with such changes therein as the Authorized Officer executing the same may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. The proposed form of the Custodial Agreement presented to this meeting and the terms and conditions thereof are hereby approved. Each Authorized Officer is hereby authorized and directed, for and in the name and on behalf of SANDAG, to execute and deliver the Custodial Agreement, in substantially said form, with such changes therein as the Authorized Officer executing the same may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 4. The proposed form of the Toll Governance Agreement presented to this meeting and the terms and conditions thereof are hereby approved. Each Authorized Officer is hereby authorized and directed, for and in the name and on behalf of SANDAG, to execute and deliver the Toll Governance Agreement, in substantially said form, with such changes therein as the Authorized Officer executing the same may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. Each Authorized Officer, is hereby authorized to execute all approvals, consents, directions, notices, orders, requests, amendments and other actions permitted or required by the Toll Allocation Agreement, the Custodial Agreement or the Toll Governance Agreement (collectively, the "Binational Agreements") including, without limitation, any amendment thereof or other agreements related thereto, that may be necessary or desirable in connection with financing, construction, operation or maintenance of the Project, and any similar action may be given or taken by an Authorized Officer, without further authorization or direction by SANDAG, and each Authorized Officer, acting singly, is

hereby authorized and directed to give any such approval, consent, direction, notice, order, request, or other action and to execute such documents and take any such action which such Authorized Officer may deem necessary or desirable to further the purposes of this Resolution.

Section 6. The officers, employees and agents of SANDAG are hereby authorized and directed, jointly and severally, for and in the name and on behalf of SANDAG, to do any and all things and to take any and all actions and to execute and deliver any and all agreements, certificates and documents, which they, or any of them, may deem necessary or advisable in order to consummate the transactions contemplated by the Binational Agreements and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution, the Toll Facility Act and the Binational Agreements.

Section 7. This Resolution shall take effect immediately upon its adoption and approval.

PASSED AND ADOPTED this 28 of June, 2024.

Attest:

Chair

Secretary

Member Agencies: Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach, Vista, and County of San Diego.

Advisory Members: California Department of Transportation, Metropolitan Transit System, North County Transit District, Imperial County, U.S. Department of Defense, Port of San Diego, San Diego County Water Authority, Southern California Tribal Chairmen's Association, and Mexico.



Special Board of Directors, Policy Advisory Committees, and Independent Taxpayer Oversight Committee

October 14, 2022

Otay Mesa East Port of Entry: Financing Strategy Update and Toll Revenue Sharing Agreement

Overview

The Otay Mesa East (OME) Port of Entry (POE) project is a joint venture between Caltrans and SANDAG, in collaboration with state and federal partners in the U.S. and Mexico, to create a 21st century border crossing, which will enhance regional mobility, reduce greenhouse gas emissions, fuel economic growth, and bolster binational trade.

On June 28, 2021, binational project stakeholders signed a Memorandum of Understanding (MOU) committing to open the OME POE in September 2024 (2021 MOU). The 2021 MOU envisioned an innovative toll collection process whereby the sole toll collection point for both northbound and southbound traffic would be on the U.S. side, which SANDAG would collect through its current toll collection system and share with Mexico. This approach is different than the traditional border crossing toll arrangement, where each country is entitled to collect a toll upon an individual's departure. The 2021 MOU also anticipated the use of a variable toll, which allows for better traffic and congestion management.

On September 23, 2022, the Borders Committee recommended that the Board of Directors approve the Toll Revenue Sharing Agreement. Today's item will include an update from our Mexican partners from the Ministry of Infrastructure, Communications and Transportation (SICT).

Key Considerations

Project Financial Strategy

The project financial strategy is based on the 2021 Investment Grade Traffic and Revenue Study, which estimated annual traffic and revenue by direction and vehicle class. Based on the study's results, the SANDAG financial team has developed an innovative financing strategy for the project, which includes toll revenue bonds, a federal Transportation Infrastructure Finance and Innovation Act (TIFIA) loan, and federal and state grants. On the U.S. side, approximately \$568 million in capital costs remain to be funded by SANDAG and its U.S. partners.

Action: **Adopt**

The Borders Committee recommends that the Board of Directors adopt Resolution No. 2023-05, approving and authorizing the execution and delivery of the Toll Revenue Sharing Agreement with Mexico's Ministry of Infrastructure, Communications, and Transportation.

Fiscal Impact:

The Toll Revenue Sharing Agreement can result in \$6.8 billion of toll revenue over 40 years for both countries.

Schedule/Scope Impact:

None.

On May 4 and May 5, 2022, SANDAG and Caltrans met with three rating agencies to present the project and visit the site as part of securing indicative ratings for the project. This process is continuing and, when complete, the indicative ratings will be presented to both the Build America Bureau as part of the application for a TIFIA loan, and to the bond market. Other funding is being sought from state and federal grants, such as a recently awarded Infrastructure For Rebuilding America (INFRA) grant from the U.S. Department of Transportation of \$150 million. Another key component of the project's financial strategy is the Toll Revenue Sharing Agreement with Mexico, the subject of this item.

Revenue Sharing Agreement

The Agreement has been under development with Mexico for several months. It has been reviewed by SANDAG legal and financial teams and by relevant Mexican agencies and signatories. If the Board adopts the resolution authorizing the execution of the Agreement, it will move the project one step closer to financing. It is anticipated that a signing event would be held this fall.

The Agreement will be between Mexico's SICT and SANDAG, and will include the following key terms:

1. Once signed, the Agreement will be effective January 1, 2023, and shall have a term extending to the later of: (i) January 1, 2063, or (ii) the date of SANDAG's final payment in full of its project bonds, TIFIA loan and other obligations under the Agreement.
2. SANDAG will be the single collection point for the variable toll for both northbound and southbound traffic. Mexico shall not collect a toll during the Agreement's term. SANDAG's current tolling operations center will support the toll collection.
3. The Board shall set the toll in accordance with applicable law, with the advice of a Binational Working Group, which will be made up of SANDAG and SICT representatives. SICT will sit as an advisory member to the Board when it considers toll setting matters. Mexico's Secretariat of Foreign Affairs (SRE) currently has an advisory seat on the Board, which will remain unchanged.
4. Once tolls are collected, they shall be deposited in a SANDAG account (Toll Revenues Fund) at the North American Development Bank (NADBank).
5. SANDAG will pay costs for certain tolling operations and maintenance expenses (Tolling O&M) from the Toll Revenues Fund.
6. Revenues remaining after Tolling O&M is paid will be deposited monthly into a joint SANDAG and SICT account (Net Revenues Fund) at NADBank.
7. NADBank will act as the custodian of the funds in both the Toll Revenues Fund and the Net Revenues Fund pursuant to a Custodial Agreement.
8. Once toll collections begin, amounts in the Net Revenues Fund will be split 50/50 except that Mexico is allowing SANDAG to keep an additional 10% (60/40) in the early years of tolling operations to generate investment-grade debt service coverage to fund necessary reserves (this split is referred to as the Modified 50/50). Once such reserves are sufficiently funded, SANDAG will repay Mexico such 10% plus applicable interest.
9. The Parties will transition from the Modified 50/50 split to a pure 50/50 split once, after ten years from Commencement of Tolling Operations, all of the following are true:
 - a. For the immediately preceding three years, SANDAG would have been able to maintain net toll revenues coverage of 2.0 times its Annual Debt Service obligations on its bonds and TIFIA loan under a pure 50/50 split.

- b. For the current fiscal year, SANDAG would be able to maintain net toll revenues coverage of 2.0 times its Annual Debt Service obligations on its bonds and TIFIA loan under a pure 50/50 split.
 - c. Toll Revenues are projected to be sufficient based on the current data to ensure SANDAG can maintain net toll revenues coverage of 2.0 times its Annual Debt Service obligations on its bonds and TIFIA loan under a pure 50/50 split.
10. Mexico has the right to data related to toll revenue collection, traffic volume, operations, and maintenance expenses. They will also have audit rights.
 11. Disputes will be resolved under a process similar to the dispute resolution process contained in United States-Mexico-Canada Agreement (also known as NAFTA 2.0).

Next Steps

In addition to the Toll Revenue Sharing Agreement execution, the project team also will be pursuing the following activities:

- Obtain indicative ratings and move forward with finalizing and pursuing the project financing strategy.
- Secure operational understandings with our federal partners to staff, maintain, and operate the POE.
- Develop the Toll Governance Agreement with SICT, which will address the processes for toll violations, toll collections, and the particulars of the Binational Working Group that is to advise the Board on toll setting.
- Develop a POE Construction, Operation, and Maintenance Agreement with the appropriate Mexican parties, which will detail Mexico's obligations to construct, operate, and maintain the POE project components located on the Mexico side of the border.
- Proceed with the procurements for the design and delivery of the OME POE and ancillary facilities.

André Douzdjian, Chief Financial Officer

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Attachments:

1. Draft Toll Revenue Sharing Agreement
2. SR 11/OME POE Binational Toll Revenue Sharing Agreement Factsheet
3. Resolution No. 2023-05: Resolution Approving and Authorizing the Execution and Delivery of a Toll Revenue Sharing Agreement Relating to the Otay Mesa East Port of Entry Project and the Taking of All Other Actions Necessary in Connection Therewith

**AGREEMENT
BETWEEN
THE MINISTRY OF INFRASTRUCTURE, COMMUNICATIONS AND
TRANSPORTATION OF THE UNITED MEXICAN STATES,
AND
THE SAN DIEGO ASSOCIATION OF GOVERNMENTS, CALIFORNIA, UNITED
STATES OF AMERICA
CONCERNING THE COLLECTION AND SHARING OF TOLL REVENUES
RELATING TO THE NEW INTERNATIONAL BORDER CROSSING AND PORT
MESA DE OTAY II - OTAY MESA EAST**

The Ministry of Infrastructure, Communications and Transportation of the United Mexican States (“SICT”), through Mr. Jorge Arganis Díaz Leal, Minister of Infrastructure, Communications and Transport, and the San Diego Association of Governments, a local agency of the State of California, United States of America (“SANDAG”), through Mr. Hasan Ikhrata, Chief Executive Officer, hereby enter into this Agreement Concerning the Collection and Sharing of Toll Revenues relating to the New International Border Crossing and Port Mesa de Otay II - Otay Mesa East (this “Agreement”).

RECITALS

CONSIDERING the Memorandum of Understanding between the Ministry of Foreign Affairs, the Ministry of Communications and Transport and the Ministry of Finance and Public Credit of the United Mexican States, the State Transportation Agency and the Department of Transportation of California, United States of America, and the San Diego Association of Governments with respect to the Mesa de Otay II - Otay Mesa East Border Crossing and Port and Access Roads to those Facilities, signed on June 28, 2021 (the “2021 MOU”);

WHEREAS, the 2021 MOU memorialized the shared intention of the parties thereto to cooperate, as expeditiously as possible within the authority of each agency, in the development of an international border crossing and port, referred to as “Mesa de Otay II - Otay Mesa East,” and related access roads and facilities;

WHEREAS, the 2021 MOU further memorialized the intention of the parties thereto to work collaboratively to implement a traffic congestion management and revenue collection strategy based on variable tolling, with tolls collected for both northbound and southbound directions by way of a single collection point, to be located within the United States on California State Route 11 (the “Toll Collection Point”);

WHEREAS, pursuant to the 2021 MOU, SICT and SANDAG (collectively, the “Parties”) plan to enter into future agreements related to Toll governance and Project operations and maintenance, which shall create a Binational Working Group to act as a non-governmental administrative body, to determine processes related to Toll setting, Toll collection and distribution, and traffic congestion and management.

WHEREAS, the 2021 MOU further memorialized the intention of the parties thereto to properly share such toll revenue in accordance with a future, binding Revenue Sharing Agreement;

WHEREAS, the Parties acknowledge and represent that it is in the best interest of the Project for the Parties to share Toll revenues on an equitable basis, reflecting the Operation and Maintenance Expenses associated with the collection of such toll revenues and the security and pledged revenue coverage requirements of the debt to be incurred solely by SANDAG to finance the acquisition and construction of certain portions of the Project;

WHEREAS, given the specifics of the Project, SICT acknowledges and represents that the revenue sharing provisions, tolling operations, variable tolling, Toll-setting policy and all other undertakings and understandings assumed under this Agreement provide, to the best of its knowledge, the most cost effective and best conditions for SICT and the people of the United Mexican States as it pertains to the Project and the subject matter hereto;

WHEREAS, given the specifics of the Project, SANDAG acknowledges and represents that the revenue sharing provisions, tolling operations, variable tolling, Toll-setting policy and all other undertakings and understandings assumed under this Agreement provide, to the best of its knowledge, the most cost effective and best conditions for SANDAG and the people of California and the United States of America as it pertains to the Project and the subject matter hereto;

WHEREAS, the purposes of the North American Development Bank (“NADBank”), a binational financial institution governed equally by the federal government of the United States of America and by the federal government of the United Mexican States, include: (i) fostering the investment of public and private capital contributing to its purposes; (ii) fostering private investment in projects, enterprises and activities in accordance with its purposes and supplementing private investment when private capital is not available on reasonable terms and conditions; and (iii) providing, under the direction of its Board of Directors, technical and other assistance for the financing and implementation of plans and projects; and

CONSIDERING that, in accordance with its purposes, NADBank may cooperate, when appropriate, with national and international institutions, as well as private funds that provide investment capital, SANDAG and SICT have decided to invite NADBank to participate in the Project, through the deposit and distribution of Toll Revenues as provided below.

REPRESENTATIONS

I. SICT hereby represents to SANDAG:

I.1. That it is an Agency of the Federal Executive Branch, which has the authority to enter into this Agreement, in accordance with the provisions set forth in articles 90 of the Constitution of the United Mexican States (*Constitución Política de los Estados Unidos Mexicanos*); 1, 2, section I, 26 and 36 sections XXI, XXII, XXIV, XXVII of the Organic Law of the Federal Public Administration (*Ley Orgánica de la Administración Pública Federal*); is able to formulate and conduct policies and programs for the development of transportation and communications in accordance with the needs of the country; build and maintain federal roads and

bridges, as well as other authorities expressly conferred by applicable laws and ancillary regulations.

I.2. That Mr. Jorge Arganis Díaz Leal, the Minister of Infrastructure, Communications and Transportation, has the authority to enter into this Agreement, pursuant to the provisions of article 2, section I and 4 of the Internal Regulations of the Ministry of Infrastructure, Communications and Transportation (*Reglamento Interior de la Secretaría de Infraestructura, Comunicaciones y Transportes*).

I.3 That for the purposes of this Agreement, its address to receive all types of notifications is the one located at Insurgentes Sur number 1089, ground floor, Colonia Noche Buena, Alcaldía Benito Juárez, Zip Code 03720, in Mexico City.

II. SANDAG hereby represents to SICT:

II.1 That it is a local agency of the State of California, which has authority to enter this Agreement in accordance with the provisions of the San Diego Regional Transportation Consolidation Act (California Public Utilities Code Section 132350 *et seq.*) and the Otay Mesa East Toll Facility Act (California Streets and Highways Code Sections 31460 *et seq.*), and the amendments thereto.

II.2. That Mr. Hasan Ikhrata, the Chief Executive Officer of SANDAG, has the authority to enter into this Agreement.

II.3 That for the purposes of this Agreement, its address to receive all types of notifications is the one located at 401 B Street, Suite 800, Attention: General Counsel, San Diego, California 92101.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I

INITIAL PROVISIONS AND DEFINITIONS

Section 1.01 Toll Sharing and Collection Agreement. This Agreement is hereby acknowledged by the Parties as the “Toll Sharing Agreement” referenced in Section II of the 2021 MOU.

Section 1.02 Scope of Agreement. The purpose of this Agreement is (i) to establish that the Project will be operated through a single facility, the Toll Collection Point, (ii) to establish the role of the Toll Collection Point with respect to the Project; and (iii) to govern the allocation of Toll Revenues between SANDAG and SICT. Matters concerning tolling operations, variable tolling, Toll-setting policy and other aspects of the Project, to the extent not addressed herein, shall be governed by a future agreement between SANDAG and SICT.

Section 1.03 Delegated Authority.

(a) Each Party shall delegate regulatory and administrative authority to the corresponding public officials and ensure that such act in accordance with such Party's powers and fulfill such Party's obligations as set forth in this Agreement in the exercise of that authority.

(b) For purposes of this Agreement, SICT shall designate in writing to SANDAG an authorized person (the "Mexican Representative") who shall serve as the authorized representative of SICT and as the point of contact for all communications with SANDAG related to the Project; and for this purpose appoints the Minister of Infrastructure, Communications and Transportation, or his or her designee.

(c) For purposes of this Agreement, SANDAG shall designate in writing to SICT, an authorized person (the "SANDAG Representative") who shall serve as the authorized representative of SANDAG and as the point of contact for all communications with SICT related to the Project; and for this purpose appoints its Chief Executive Officer, or his or her designee.

Section 1.04 Definitions.

(a) For purposes of this Agreement, unless otherwise provided:

"Annual Debt Service" means the combined scheduled principal and interest due and to become due in any Fiscal Year on the outstanding Bonds and the TIFIA Loan.

"Binational Working Group" means the work group made up of the representative or representatives of SICT and SANDAG, having the purposes and functions described in Article III of this Agreement.

"Bonds" means the Toll revenue bonds and related obligations to be issued or incurred, and payable from and secured by SANDAG Net Revenues, pursuant to the Indenture for the purpose of financing the United States-side Construction Project, as noted in Exhibit A.

"Business Day" means any day, other than a Saturday, Sunday or other day on which the principal office of the Trustee or NADBank is authorized or obligated by law or executive order to be closed.

"Commencement of Toll Road Operations" means the date to be agreed upon by the Parties which shall be after substantial completion of the Construction Project, the exchange of diplomatic notes regarding the commencement of operations, the completion of the Intelligent Transportation System ("ITS") testing to the satisfaction of the Parties and necessary agencies, and any other requirements determined necessary by the Parties.

"Construction Project" means those components of the Project so described in Exhibit A hereto.

"Custodial Agreement" means the Custodial Agreement to be entered by SICT, SANDAG and NADBank as custodian relating to the allocation of Toll Revenues described in Section 3.03 hereof, and any amendments or supplements thereto entered into in accordance with its terms.

“Effective Date” means the date set forth in Section 5.01.

“Fiscal Year” means the annual period from July 1 to June 30.

“Indenture” means the Indenture of Trust to be entered into by SANDAG and the Trustee providing for the issuance of the Bonds, and any amendments or supplements thereto entered into in accordance with its terms.

“ITS Infrastructure” means all components of the Intelligent Transportation System to be deployed as part of the Project, including roadway tolling infrastructure and back-office management applications, border crossing traffic management systems, border wait time systems, traffic detection sensors, roadway lane management and variable message signs, data sharing and communications systems, and related hardware, software and other intellectual property.

“NADBank” means the North American Development Bank.

“Net Revenues” means Toll Revenues less Operation and Maintenance Expenses.

“Net Revenues Fund” means the fund by that name described in Section 3.02 hereof.

“Net Revenues received by SICT for the benefit of the Government of the United Mexican States” means (i) prior to the modification described in paragraph (e) of Section 3.03 hereof, that 40% (forty percent) share of Net Revenues received by NADBank, which is to be transferred by NADBank to SICT for the benefit of the United Mexican States pursuant to Section 3.03 hereof, and (ii) after the modification described in paragraph (e) of Section 3.03 hereof, that 50% (fifty percent) share of Net Revenues received by NADBank, which is to be transferred by NADBank to SICT for the benefit of the United Mexican States pursuant to Section 3.03 hereof.

“Operation and Maintenance Expenses” means all reasonable and documented current expenses incurred and paid or payable by SANDAG for operations, maintenance, service, repair, and replacement costs for (1) the Roadway Toll Collection System; (2) the Toll Backoffice System; and (3) certain other components of the Project as the Parties may agree.”

“Operation and Maintenance Expenses Budget” means the budget for Operation and Maintenance Expenses to be prepared annually by SANDAG and approved by the Binational Working Group, which approval shall not be unreasonably withheld.

“Pro Forma Net Revenues” means 50% (fifty percent) of Net Revenues received or projected to be received by NADBank during any Fiscal Year. This definition is intended to be used solely for the purpose of making the calculations described in Section 3.04 hereof

“Project” means, collectively, the international border crossing referred to as “Mesa de Otay II - Otay Mesa East” and related access roads and facilities, including but not

limited to the access road on the United States side known as California State Route 11 or SR-11, the access road on the Mexican side known as Blvd. Las Torres, and the ITS Infrastructure, all as more particularly shown as Exhibit A hereto.

“Rating Agency” means any of S&P Global Ratings, Moody’s Investors Service or Fitch Ratings.

“Remaining Funds” means the funds remaining at the end of each annual period described in Section 3.03 hereof after SANDAG Net Revenues are applied to satisfy all payment and reserve funding obligations under the Indenture and the TIFIA Loan Agreement.

“Roadway Toll Collection System” means roadway and roadside Toll collection equipment at the Toll Collection Point; and related assets and software licenses.

“SANDAG Net Revenues” means (i) prior to the modification described in paragraph (e) of Section 3.03 hereof, that 60% (sixty percent) share of Net Revenues received by NADBank, which is to be transferred by NADBank to the Trustee pursuant to Section 3.03 hereof, and (ii) after the modification described in paragraph (e) of Section 3.03 hereof, that 50% (fifty percent) share of Net Revenues received by NADBank, which is to be transferred by NADBank to the Trustee pursuant to Section 3.03 hereof.

“TIFIA Lender” means the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau.

“TIFIA Loan” means the loan made by the TIFIA Lender to SANDAG pursuant to the TIFIA Loan Agreement.

“TIFIA Loan Agreement” means the loan agreement to be entered into by SANDAG and the TIFIA Lender, providing for a loan to SANDAG payable from and secured by a pledge of SANDAG Net Revenues (in any case, excluding the Net Revenues to SICT for the benefit of the United Mexican States), for the purpose of financing the United States- side Construction Project, as described in Exhibit A hereto, and any amendments or supplements thereto.

“Toll” means the tolls, user fees, rents or other similar charges imposed or collected by SANDAG through the Toll Collection Point, for entrance to or use of the Toll Road in either direction.

“Toll Backoffice Systems” means all costs related to administration, processing, accounting, collection, enforcement, and marketing related to the Roadway Toll Collection System and/or Toll Revenues.

“Toll Collection Point” means the single collection point for the Project’s traffic congestion management and revenue collection strategy based upon a variable structure, collected for traffic traveling in either northbound or southbound directions by way of a single collection point, to be located within the United States on California State Route 11.

“Toll Governance Agreement” means a future agreement between the Parties that will set forth (i) the governance process of the Binational Working Group, (ii) matters related to Toll setting, Toll collection and distribution of Toll Revenues, and (iii) matters related to traffic congestion and management.

“Toll Revenues” means (a) all revenues collected by SANDAG resulting from its imposition of the Toll for cross-border traffic, as well as the corresponding fines and penalties and interest thereon collected as a result of a failure to pay the Toll, (b) proceeds of insurance payable to or received by SANDAG with respect to the Toll Road (except for proceeds of insurance that are and applied or reserved for application to the repair, restoration or replacement of the Toll Road), (c) proceeds of any condemnation awards with respect to the Toll Road (except to the extent applied or reserved for application to the replacement of the Toll Road); but excluding therefrom cash advances representing deposits against future Toll payments from users or potential users of the Toll Road, as reasonably agreed by the Parties, (d) proceeds of damages either awarded to or received by SANDAG that are in consideration for uncollected Toll Revenues and (e) any interest or other investment earnings on amounts on deposit in the Toll Revenues Fund and the Net Revenues Fund held by NADBank.

“Toll Revenues Fund” means the fund by that name described in Section 3.02 hereof.

“Toll Road” means California State Route 11, and any related tolling facilities and tolled or non-tolled connecting or supporting streets, roads, highway lanes or other facilities, as designated by SANDAG, and any expansions, improvements, upgrades, enlargements or enhancements thereto designated by SANDAG.

“Traffic Consultant” means any traffic and revenue consultant or firm of nationally or internationally recognized traffic and revenue consultants experienced in performing the duties for which a Traffic Consultant is required to be employed pursuant to the provisions of this Agreement selected by the Parties.

“Trustee” means U.S. Bank Trust Company, National Association, as trustee under the Indenture, and any successor thereto.

“United States-side Construction Project” means that portion of the Construction Project constructed and to be constructed on the United States side of the border, as described in Exhibit A hereto.

(b) Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the 2021 MOU.

ARTICLE II

PRINCIPAL UNDERSTANDINGS

Section 2.01 Principal Understandings. The Parties hereby acknowledge and agree that:

- A. The Project shall be carried out by both Parties with Toll collection functions undertaken solely by SANDAG, through the Toll Collection Point.
- B. In order to finance the Project, and in accordance with applicable law, upon substantial completion of the Construction Project, the Parties desire to have the Toll be an undivided charge imposed on each vehicle upon entering or using the Toll Road to cross the Otay Mesa East - Mesa de Otay II international border crossing, whether traveling northbound or southbound. It is an express condition of this Agreement that (i) no tolls shall be collected on Mexico side of the Otay Mesa East - Mesa de Otay II international border crossing and (ii) SICT shall not participate as a borrower, joint obligor, or guarantor, or in any similar capacity, in the financing of the United States-side Construction Project.
- C. To the extent permitted by applicable law, SANDAG shall serve as the exclusive entity to collect such Toll, for the benefit of the Parties, through the Toll Collection Point.
- D. SANDAG shall support Toll revenue collection operations at the Toll Collection Point, through its current Toll operations center, with Tolls paid through the cash collection machines, automated payment terminals and prepaid anonymous electronic account options, using unified revenue and toll payment equipment to collect Tolls in both directions.

Section 2.02 Confirmation of the 2021 MOU. Except as otherwise provided in this Agreement, the Parties acknowledge and confirm the commitments and understandings provided in the 2021 MOU.

ARTICLE III

TOLL REVENUES; ALLOCATION OF NET REVENUES

Section 3.01 Imposition of Toll; Toll Setting.

(a) Upon Commencement of Toll Road Operations, SANDAG shall commence the imposition of the Toll, and collection of Toll Revenues for the benefit of the Parties. SANDAG, through its Board of Directors, shall set the Toll during the term of this Agreement, in accordance with applicable law and a future Toll Governance Agreement between the Parties. Such Toll setting shall take into account service and performance standards in addition to financial metrics.

(b) SICT and SANDAG shall cooperate to form the Binational Working Group to advise the SANDAG Board of Directors on Toll setting. Upon receiving such advice and recommendations from the Binational Working Group, the SANDAG Board of Directors shall deliberate and take action. The appropriate representative from SICT shall have an advisory position on the SANDAG Board of Directors, in accordance with applicable SANDAG policies, to advise on such Toll setting. Such SICT advisory position shall be in addition to the advisory

position currently held by the Ministry of Foreign Relations (*Secretaría de Relaciones Exteriores*) (“SRE”) on the SANDAG Board of Directors

Section 3.02 Collection of Toll Revenues. SANDAG shall collect and account for Toll Revenues on a daily basis. SANDAG shall deposit Toll Revenues into a designated account to be known as the “Toll Revenues Fund,” with SANDAG as owner of the funds in such account, to be maintained and administered by NADBank as Custodian pursuant to the Custodial Agreement. As shall be provided in the Custodial Agreement, from time to time, SANDAG shall direct NADBank to disburse, from time to time, from the Toll Revenues Fund all amounts needed to pay or reimburse SANDAG for Operation and Maintenance Expenses that are consistent with the Operation and Maintenance Budget. As shall be provided in the Custodial Agreement, and no later than five (5) Business Days prior to the last Business Day of each month, NADBank shall transfer all remaining Net Revenues (except for a reasonable portion needed for Operation and Maintenance Expenses provided for in the Operation and Maintenance Budget expected to come due before sufficient additional Toll Revenues are expected to be received to pay such Operation and Maintenance Expenses) into a designated account, with SICT (for the benefit of the United Mexican States) and SANDAG as joint owners of the funds in such account, to be known as the “Net Revenues Fund,” maintained and administered by NADBank as Custodian pursuant to the Custodial Agreement.

Section 3.03 Allocation of Net Revenues. Net Revenues will be distributed equitably between SANDAG and SICT, that is, 50% (fifty percent) each; in accordance with the following; with the understanding that to meet the financial commitments to be undertaken by SANDAG pursuant to the TIFIA Loan Agreement and the Indenture, the distribution of Net Revenues shall be made in the following order:

(a) Firstly, no later than the second to last Business Day of each month, from amounts in the Net Revenues Fund, NADBank shall allocate and transfer (i) 60% (sixty percent) of Net Revenues therein to the Trustee to be applied as set forth in the Indenture and the TIFIA Loan Agreement, and (ii) 40% (forty percent) of Net Revenues therein to SICT for the benefit of the United Mexican States, in each case pursuant to procedures and instructions set forth in the Custodial Agreement.

(b) Secondly, no later than on the last Business Day of June of each year, SANDAG shall pay, or cause the Trustee to pay, solely from Remaining Funds, to SICT for the benefit of the United Mexican States an amount equal to the lesser of (i) 10% (ten percent) of Net Revenues for the prior annual period or (ii) all Remaining Funds for the prior annual period. If Remaining Funds are insufficient to allow SANDAG to pay the amount set forth in clause (i) above, the difference between amounts described in clause (i) and clause (ii) above (the “Shortfall Amount”) shall be carried over to the following annual period by adding the Shortfall Amount to the amount calculated under clause (i) above for the following annual period, which shall be payable from Remaining Funds, to the extent then available, at the end of such following annual period (and if Remaining Funds are again insufficient to fully pay off the amount described in clause (i) for such following annual period, the cumulative Shortfall Amount shall likewise be carried over to the next following annual period). SANDAG shall be obligated to pay to SICT, solely from

Remaining Funds, interest on any unpaid Shortfall Amount at a daily rate equal to the Secured Overnight Financing Rate, or its acceptable replacement, in the event that said rate is no longer reported. Said interest will be capitalized and continue to accrue until paid.

(c) The Parties shall have no obligation to share any revenues generated by or relating to the Project other than Net Revenues and Remaining Funds as described herein.

(d) The Parties hereby acknowledge and agree that the payment obligations of SANDAG under the Indenture and the TIFIA Loan Agreement shall not be payable from or secured by Net Revenues received by SICT for the benefit of the United Mexican States. SANDAG shall not grant any claim to, lien on, or interest in the Net Revenues received by SICT for the benefit of the United Mexican States to the holders of the Bonds, to the TIFIA Lender, or any other party.

(e) Notwithstanding the foregoing, upon satisfaction of all conditions described in Section 3.04, paragraphs (a) and (b) of this Section 3.03 shall be replaced in their entirety with the following:

“(a) On the last Business Day of each month, from amounts in the Net Revenues Fund, NADBank shall allocate and transfer (i) 50% (fifty percent) of Net Revenues therein to the Trustee to be applied as set forth in the Indenture and the TIFIA Loan Agreement, and (ii) 50% (fifty percent) of Net Revenues therein to SICT for the benefit of the United Mexican States, in each case pursuant to procedures and instructions set forth in the Custodial Agreement.

(b) [Intentionally omitted]

Section 3.04 Conditions to Modification of Net Revenues Allocation.

(a) Subject to written approval from the TIFIA Lender, which may not be unreasonably withheld, delayed or denied, the allocation of Net Revenues under the original paragraph (a) of Section 3.03 hereof shall be modified not earlier than the tenth anniversary of the Effective Date pursuant to paragraph (e) of Section 3.03 hereof on the July 1 immediately following satisfaction of the following conditions:

(1) Based on SANDAG’s audited financial statements for the Toll Road, Pro Forma Net Revenues for each of the three immediately preceding Fiscal Years are shown to be not less than 2.0 times Annual Debt Service. Upon satisfaction of the condition described in subparagraph (a)(1) of this Section 3.04, SICT shall have the right to cause SANDAG to engage a Traffic Consultant to determine whether the condition described in subparagraph (a)(3) of this Section 3.04 is satisfied.

(2) Based on SANDAG’s then current annual budget for the Toll Road, Pro Forma Net Revenues for the current Fiscal Year are projected to be not less than 2.0 times Annual Debt Service.

(3) Based on the report of the Traffic Consultant selected pursuant to subparagraph (a)(1) of this Section 3.04, Pro Forma Net Revenues for the current and each

succeeding Fiscal Year until the later of the final maturity of the outstanding Bonds or the TIFIA Loan are projected to be not less than 2.0 times Annual Debt Service.

(b) Upon satisfaction of the conditions described in subparagraphs (a)(1), (a)(2) and (a)(3) of Section 3.04 above, SANDAG shall promptly notify the Mexican Representative and NADBank. On the July 1 immediately following such notice, the allocation of Net Revenues hereunder shall be modified in accordance with paragraph (e) of Section 3.03 hereof.

Section 3.05 Full Transparency; Accountability and Audits.

(a) In accordance with the full transparency guiding principles to which the Parties are bound and committed, SANDAG shall provide SICT permanent access to information concerning (1) the total amount of Toll Revenues that it collects each week; (2) the detailed information concerning the daily volume of traffic on California State Route 11; (3) Operation and Maintenance Expenses; and (4) any other information reasonably requested. All such information shall be provided deidentified in accordance with applicable law.

(b) SANDAG shall report every six months to SICT, if requested by SICT, information regarding the Toll Revenues and Operation and Maintenance Expenses. In addition, SANDAG shall allow SICT to audit from time to time, at SICT's sole expense, the collection of Toll Revenues and the expenditure of Toll Revenues to pay Operation and Maintenance Expenses and other operations relating to the Project, as reasonably requested.

ARTICLE IV

DISPUTE RESOLUTION

Section 4.01 Scope.

(a) The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of a matter that might affect its operation or application.

(b) The dispute settlement provisions of this Article IV shall apply (i) with respect to the avoidance or settlement of disputes between the Parties regarding the interpretation or application of this Agreement or (ii) when either of the Parties considers that an actual or proposed action of the other Party would be inconsistent with an obligation of this Agreement or that an actual or proposed inaction of the other Party would constitute failure to carry out an obligation of this Agreement.

Section 4.02 Consultations.

(a) The Parties may request consultations with respect to any matter described in paragraph (b) Section 4.01 above. Such request shall be in writing, and shall set out the reasons for the request, including identification of the specific action, inaction or other matter at issue and an indication of the legal basis for the complaint. Unless the Parties decide otherwise, they shall

enter into consultations no later than fifteen (15) Business Days after the date of delivery of the request therefor.

(b) The Parties shall make every attempt to arrive at a mutually satisfactory resolution of a matter through consultations under this Section 4.02. To this end: (i) the Party requesting consultations shall provide sufficient information to enable a full examination of how the actual or proposed action, inaction or other matter at issue might affect the operation of application of this Agreement; (ii) all participants in such consultations shall treat the information exchanged in the course of consultations that is designated as confidential on the same basis as the Party providing the information; and (iii) the Parties shall seek to avoid a resolution that adversely affects the interests of the other under this Agreement.

Section 4.03 Alternative Dispute Resolution. The Parties may initiate at any time to voluntarily undertake an alternative method of dispute resolution, such as good offices, conciliation or mediation. Proceedings that involve good offices, conciliation or mediation shall be confidential and without prejudice to the rights of the Parties in another proceeding. SICT and SANDAG proceeding under this Section 4.03 may suspend or terminate those proceedings. If the Parties so decide, good offices, conciliation or mediation may continue while a dispute proceeds for resolution before a panel established under Section 4.04.

Section 4.04 Establishment of Panel.

(a) If the Parties fail to resolve the matter within thirty (30) Business Days after the date of delivery of the request for consultations described in paragraph (a) of Section 4.02 hereof, or such other period as the Parties may decide, then either Party may request the establishment of a panel by means of a written notice delivered to the other, and shall include in such request an identification of the measure or other matter at issue and a brief summary of the legal basis of the complaint sufficient to present the issue clearly. Upon delivery of such request, a panel shall be established to be composed of the panelists described in paragraph (b) of Section 4.04 below.

(b) The panel shall comprise three members. One panelist shall be selected by SICT, one panelist shall be selected by SANDAG and one panelist shall be selected by NADBank pursuant to the Custodial Agreement. Each panelist shall be selected on the basis of objectivity, reliability and sound judgment. The panelist selected by NADBank shall chair the panel.

(c) If a panelist resigns, is removed or becomes unable to serve, the time frames applicable to the panel's proceedings shall be suspended until a replacement is appointed and shall be extended by the amount of time that the work was suspended. Such appointment shall be made within the following fifteen (15) Business Days in accordance with the method used to select such panelist pursuant to paragraph (b) of Section 4.04 hereof.

Section 4.05 Panel Proceedings; Panel Report

(a) The Parties shall have the right to at least one hearing before the panel at which each Party may present views orally, and each may provide an initial and a rebuttal written submission. The panel shall protect the confidentiality of information designated as confidential.

Written submissions and oral arguments shall be made in one of the languages of the Parties, unless the Parties decide otherwise.

(b) The panel's function shall be to make an objective assessment of the matter before it and to present a report that contains (i) findings of fact, (ii) determinations as to whether the action, inaction or other matter at issue is inconsistent with the obligations in this Agreement or whether either Party has otherwise failed to carry out its obligations in this Agreement, (iii) recommendations for the resolution of the dispute and (iv) the reasons for the findings and determinations.

(c) The panel shall interpret this Agreement in accordance with customary rules of interpretation of public international law. Panel determination shall be unanimous, except that if the panel is unable to reach consensus, it may take its decision by majority vote.

(d) The panel shall present an initial report no later than sixty (60) Business Days after the date of the appointment of the last panelist. The Parties may submit written comment to the panel on its initial report no later than fifteen (15) Business Days after the presentation of the initial report or within another period as the Parties may decide. After considering such comments, the panel, on its own initiative or at the request of either Party, may (i) request the views of the other Party, (ii) reconsider its report or (iii) make such further examination as it considers appropriate. The panel shall present a final report no later than thirty (30) Business Days after presentation of the initial report, unless the Parties decide otherwise.

(e) Within thirty (30) Business Days from receipt of a final report that contains findings that (i) the action, inaction or other measure at issue is inconsistent with the obligations of either Party in this Agreement, or (ii) either Party has otherwise failed to carry out its obligations in this Agreement, the Parties shall endeavor to agree on the resolution of the dispute.

ARTICLE V

GENERAL PROVISIONS

Section 5.01 Effective Date. This Agreement shall become effective on January 1, 2023, provided that by that date each of the Parties receives an original counterpart of this Agreement, duly executed.

Section 5.02 Term. The term of this Agreement shall commence on the Effective Date and terminate in the event the later of the following occurs (i) the date that is forty (40) years after the Effective Date or (ii) the date that all obligations of SANDAG under the Indenture, the TIFIA Loan Agreement and this Agreement have been satisfied and paid in full, including the obligation to cause NADBank to allocate Net Revenues to SICT for the benefit of the United Mexican States, pursuant to paragraph (a) of Section 3.03 hereof and the obligation to pay any Shortfall Amount and interest accrued thereon from Remaining Funds pursuant to paragraph (b) of Section 3.03 hereof.

Section 5.03 Further Assurances.

(a) In order to assist SANDAG with satisfying its obligations under the Indenture, the TIFIA Loan Agreement or federal securities laws of the United States of America, the Mexican Representative (and/or the duly authorized officers of SICT, in accordance with the provisions of paragraph (b) of Section 1.03 hereof) will make its best efforts to provide any information, execute and deliver any documents or take any other actions reasonably requested by SANDAG. Moreover, in order to assist SICT with satisfying its credit, transparency, or any other obligations required under the field of information, the SANDAG Representative, in accordance with the provisions of paragraph (c) of Section 1.03 hereof, will make its best efforts to provide any information, execute and deliver any documents or take any other action reasonably requested by SICT.

(b) In connection with the foregoing, SICT shall deliver to SANDAG, promptly after the Effective Date of this Agreement a legal opinion at SANDAG's expense, of outside counsel to SICT selected by SICT addressing the enforceability of this Agreement against SICT, in form and substance reasonably satisfactory to SANDAG.

Likewise, SANDAG shall deliver to SICT, promptly after the Effective Date of this Agreement, a legal opinion at SANDAG's expense, of outside counsel to SANDAG selected by SANDAG addressing the enforceability of this Agreement against SANDAG, in form and substance reasonably satisfactory to SICT.

(c) Under any reason or circumstance, SICT is not liable with respect to any payment obligations of SANDAG under the TIFIA Loan Agreement, the Indenture and/or the Bonds. SANDAG undertakes to keep SICT, including the Mexican Representative (and/or the duly authorized officers of each of the Mexican parties to the 2021 MOU) (collectively, the "Indemnified Parties") free from any claim, lawsuit, complaint, proceeding, investigation, or action in connection with the TIFIA Loan Agreement, the Indenture and/or the Bonds to the extent caused by or arising from any acts or omissions of SANDAG; provided, however, that SANDAG shall not be required to hold harmless and indemnify any of the Indemnified Parties for any such claim, lawsuit, complaint, proceeding, investigation or action, but only if it is determined by a court with jurisdiction over the matter to have been caused by or arising from the negligence, recklessness, breach of contract, or willful misconduct of such Indemnified Party.

Section 5.04 Lawfully Binding Agreement. This Agreement is legally binding on the Parties. Each Party hereby accepts and recognizes its obligations and rights hereunder, being legally enforceable at law or in equity.

Section 5.05 No Liability. Either Party shall not be liable for the acts or omissions of the other Party.

Section 5.06 Waivers. No waiver of any provision of this Agreement requested by either Party shall be valid without the prior written consent of the other Party.

Section 5.07 Amendment. No amendment or modification of any provision of this Agreement shall be valid without the written agreement of both Parties.

Section 5.08 No Assignment. Neither Party may assign any of the rights, obligations or other provisions of this Agreement.

Section 5.09 Applicable Law. This Agreement shall be interpreted consistent with all applicable laws, and actions taken hereunder shall be subject to, and shall be performed in accordance with, all applicable laws. The obligations of SANDAG under this Agreement shall be governed by the laws of the State of California, and the obligations of SICT under this Agreement shall be governed by the laws of the United Mexican States.

Section 5.10 Execution in Counterparts. This Agreement will be executed in 2 (two) original counterparts, each one in both English and Spanish, which both shall be deemed authentic and all of which taken together shall constitute one and the same instrument.

[SIGNATURE SHEET FOLLOWS]

**MINISTRY OF INFRASTRUCTURE,
COMMUNICATIONS AND TRANSPORTATION OF
THE UNITED MEXICAN STATES**

By: _____
Name: Jorge Arganis Diaz Leal
Title: Minister
Date Signed: _____

SAN DIEGO ASSOCIATION OF GOVERNMENTS

By: _____
Name: Hasan Ikhata
Title: Chief Executive Officer
Date Signed: _____

**Witnessed by the Vice-Chair of the
SAN DIEGO ASSOCIATION OF GOVERNMENTS**

By: _____
Name: Todd Gloria (Mayor of the City of San Diego)
Title: Vice-Chair
Date Signed: _____

**Witnessed by the
STATE OF CALIFORNIA**

By: _____
Name: Eleni Kounalakis
Title: Lieutenant Governor
Date Signed: _____

**Witnessed by the
NORTH AMERICAN DEVELOPMENT BANK**

By: _____
Name: Calixto Mateos-Hanel
Title: Managing Director
Date Signed: _____

DRAFT

EXHIBIT A



Exhibit A – Key*

The numbered paragraphs (below) correspond to the numbers on the map. The map is for illustrative purposes only.

1. **State Route 11 Toll Road.** Construction is complete. Will not be financed with the Bonds or TIFIA loan.

California State Route 11 (also known as SR-11) is approximately 2.5 miles and includes connectors to California State Routes 905 and 125. SR-11 connects to the future Otay Mesa East Port of Entry site.

2. **Otay Mesa East Port of Entry.** Design in progress. Site preparation and utility development is under construction but construction of the Port of Entry buildings and supporting facilities has not commenced. The Port of Entry buildings and supporting facilities will be financed with the TIFIA Loan, Bonds, and/or grants.

The TIFIA Loan and Bonds will finance design and construction of a United States Port of Entry facility to provide controlled entry to and departure from the United States for passenger and commercial vehicles, in accordance with the requirements of United States Customs and Border

Protection and other United States federal agencies responsible for the enforcement of federal laws pertaining to such activities. There are anticipated to be 10 inbound lanes and six outbound lanes upon Commencement of Operations.

3. **Intelligent Transportation Systems (ITS) and Toll Facilities.** Design in progress. Construction has not yet commenced. Will be financed with the TIFIA Loan, Bonds, and/or grants.

Includes toll booths on SR-11 (near Siempre Viva Road), roadway technology infrastructure and related systems (e.g., fiber and wireless communications systems, vehicle detection equipment, messaging signs, and tolling collection equipment), and related software systems (e.g., Regional Border Management System and software upgrades to regional tolling back-office system to support the SR-11 tolling).

4. **California Highway Patrol Commercial Vehicle Enforcement Facility.** Design in progress. Construction has not commenced. Will be financed with the TIFIA Loan, Bonds, and/or grants.

The California Highway Patrol Commercial Vehicle Enforcement Facility (commonly called a weigh station) will be designed and constructed to meet the applicable California and United States agencies' requirements to process and inspect commercial vehicles for travel on United States federal highways and California state and local roads.

5. **Mesa de Otay II Port of Entry.** The design of the Mesa de Otay II Port of Entry is complete (see Exhibit B, below). It is designed over a surface of 31 hectares, allowing the accommodation of the different agencies involved, along with export and import zones. This design was coordinated with the United States-counterpart for its homologation to comply with the binational requirements and the collection logistics on the United States side. The Ministry of National Defense (Secretaría de la Defensa Nacional) (SEDENA) will construct the Mesa de Otay II Port of Entry with public resources.

6. **Intelligent Transportation System.** Design in progress. The completion of the design portion of the Intelligent Transportation System is coordinated among the National Customs Agency of Mexico (ANAM), Mexico's Ministry of National Defense (SEDENA), and SICT. The terms of reference for its contracting must incorporate elements that provide information to the user, feedback to the United States-side on traffic lanes that will be interchangeable, waiting times, toll payment, etc. The Control Center, located inside the border port, will monitor this information.

7. **Access Road.** The Mexican access road has been designed with a length of 1.25 kilometers, with eight (8) lanes of circulation, four (4) in each direction; it includes the construction of the

Vial Distributor for the access to the port from the Tijuana-Tecate freeway, as well as lateral streets at the same level for local access.

Currently, works are being carried out with the Federal Electricity Commission (Comisión Federal de Electricidad) to relocate the high, medium, and low voltage transmission lines, which will allow the initial construction of the access road.

Within the layout of the road, there is a gas pipeline owned by the company Ienova, which is working on the project to relocate and/or protect the pipeline.

*The Project includes all of the items 1 through 7. The Construction Project consists of items 2 – 7. The United States-side Construction Project consists of items 2 – 4.

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SR 11 OTAY MESA EAST PORT OF ENTRY

Binational Toll Revenue Sharing Agreement

The Otay Mesa East Port of Entry Project (OME POE) hinges on an **innovative strategy** which uses toll revenues to help finance the design and construction of the POE. The financing strategy depends on a Toll Revenue Sharing Agreement with Mexico.

Unique Variable Tolling Approach

Unlike other tolled facilities with a fixed price, the OME POE will manage cross border traffic using variable tolls collected on State Route 11 (SR 11). Variable toll rates will be set using real time vehicle crossing data. The variable tolls aim to provide travelers an average 20-minute border wait time. Higher tolls will be charged during peak periods to manage throughput. Toll collection will be located on the U.S. side for northbound and southbound travelers.

Toll Revenue Sharing Agreement

Toll revenues will be shared jointly between SANDAG and Mexico under a Toll Revenue Sharing Agreement. The Agreement has been under development with Mexico for several months. It has been reviewed by SANDAG's legal and financial teams and by Mexican agencies. If the Board of Directors approves its execution, it will move the Project one step closer to financing and completion. The Agreement will be between Mexico's Ministry of Infrastructure, Communications and Transportation (SICT) and SANDAG. It establishes who will collect tolls, how tolls will be set, and how revenues will be distributed.

Who will collect tolls?

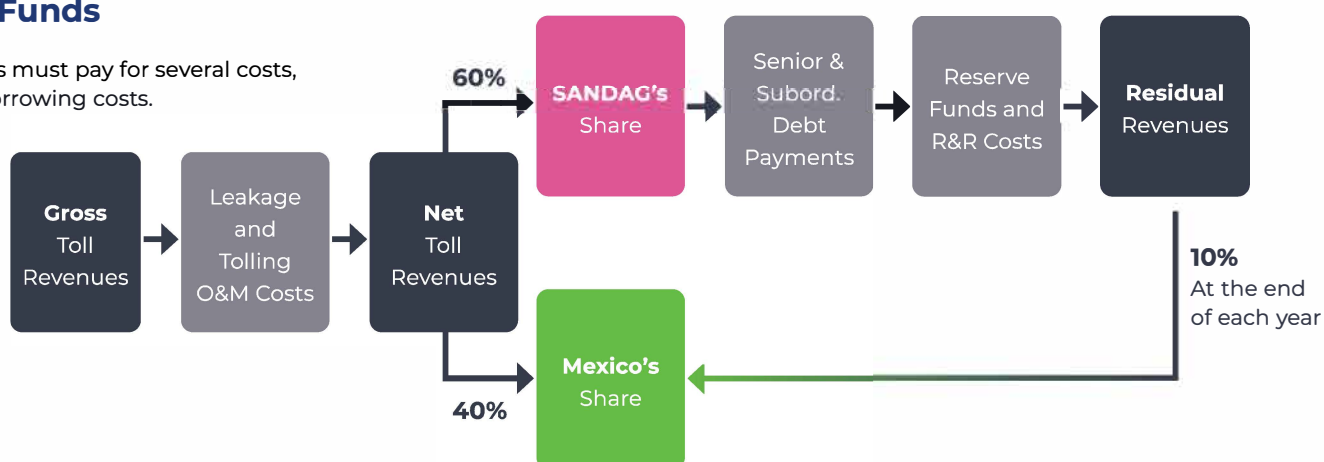
SANDAG will be the single collection point for the variable toll for both northbound and southbound traffic using its current tolling operations center. Mexico will not collect a toll during the Agreement's term.

How will tolls be set?

SANDAG's Board of Directors will set the toll in accordance with applicable law, with the advice of a Binational Working Group made up of SANDAG and SICT representatives.

Flow of Funds

Toll revenues must pay for several costs, including borrowing costs.



How will revenues be distributed?

Toll revenues will be deposited in a SANDAG fund at the North American Development Bank (NADBank). SANDAG will pay costs for certain tolling and operations and maintenance expenses. Revenues remaining will be deposited monthly into a joint SANDAG and SICT account at NADBank, who will act as the custodian of the funds pursuant to a Custodial Agreement.

Revenues will be split 50/50 except Mexico is allowing SANDAG to keep an additional 10% (60/40) in the early years of tolling operations to fund reserves necessary to generate investment-grade debt service coverage ratios (referred to as the Modified 50/50). Once such reserves are sufficiently funded and annual SANDAG debt service is paid, SANDAG will repay Mexico such 10% plus applicable interest.

September 2022



San Diego, CA 92101
Phone (619) 699-1900
Fax (619) 699-1905
sandag.org

Resolution No. 2023-05

Resolution Approving and Authorizing the Execution and Delivery of a Toll Revenue Sharing Agreement Relating to the Otay Mesa East Port of Entry Project and the Taking of All Other Actions Necessary in Connection Therewith

WHEREAS, the San Diego Association of Governments (SANDAG) is a consolidated regional transportation agency organized and existing pursuant to the San Diego Regional Transportation Consolidation Act, being Chapter 3 of Division 12.7 of the Public Utilities Code of the State of California (Section 132350 et seq.);

WHEREAS, SANDAG is authorized by Sections 31474 et seq. of the Streets and Highways Code of the State of California (as amended, the "Toll Facility Act") to impose tolls along State Route 11 (SR-11), which will connect with a new international border crossing and port facility between the United States and Mexico known as Otay Mesa East on the U.S. side of the border, in the County of San Diego, and Mesa de Otay II on the Mexico side of the border (collectively, the Project);

WHEREAS, the Toll Facility Act was recently amended by the enactment of Senate Bill No. 985 (Hueso) (SB 985), which was signed by the Governor on September 18, 2022, and which will take effect, pursuant to Article IV, Section 8 of the California Constitution, on January 1, 2023;

WHEREAS, SB 985 authorizes SANDAG, among other things, to contract with one or more of the federal government of Mexico or a governmental agency or unit thereof, to provide for (i) toll collection to one side of the Otay Mesa East Port of Entry, (ii) the equitable allocation of toll revenues and (iii) the equitable allocation and financing of the operating, maintenance and capital costs of the Project;

WHEREAS, SANDAG has heretofore entered into a Memorandum of Understanding with the Ministry of Foreign Affairs, the Ministry of Infrastructure, Communications and Transport and the Ministry of Finance and Public Credit of the United Mexican States, the California State Transportation Agency and the California Department of Transportation with respect to the Mesa de Otay II – Otay Mesa East Border Crossing and Port and Access Roads to those Facilities, signed on June 28, 2021 (the 2021 MOU);

WHEREAS, the 2021 MOU memorialized the shared intention of the parties thereto to cooperate in the development of the Project and to work collaboratively to implement a traffic congestion management and revenue collection strategy based on variable tolling, with tolls collected for both northbound and southbound traffic by way of a single collection point to be located on SR-11;

WHEREAS, pursuant to the 2021 MOU, SANDAG and the Ministry of Infrastructure, Communications and Transport of the United Mexican States (SICT) have negotiated the terms of an Agreement Concerning the Sharing of Toll Revenues relating to the New International Border Crossing Mesa de Otay II – Otay Mesa East (the Toll Revenue Sharing Agreement);

WHEREAS, by its terms the Toll Revenue Sharing Agreement shall become effective not earlier than the effective date of SB 985; and

WHEREAS, a proposed form of the Toll Revenue Sharing Agreement between SANDAG and SICT has been prepared and presented to SANDAG.

NOW, THEREFORE, BE IT RESOLVED

Section 1. SANDAG finds and determines that the foregoing recitals are true and correct and makes them an effective part of this Resolution by incorporating them herein by reference.

Section 2. The proposed form of the Toll Revenue Sharing Agreement presented to this meeting and the terms and conditions thereof are hereby approved. Each of the Chief Executive Officer, the Chief Financial Officer or the designee of either, acting singly (each, an Authorized Officer), is hereby authorized and directed, for and in the name and on behalf of SANDAG, to execute and deliver the Toll Revenue Sharing Agreement, in substantially said form, with such changes therein as the Authorized Officer executing the same may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. Each Authorized Officer, is hereby authorized to execute all approvals, consents, directions, notices, orders, requests, amendments and other actions permitted or required by the Toll Revenue Sharing Agreement, including, without limitation, any amendment of the Toll Revenue Sharing Agreement or other agreements related thereto, that may be necessary or desirable in connection with financing, construction, operation or maintenance of the Project, and any similar action may be given or taken by an Authorized Officer, without further authorization or direction by SANDAG, and each Authorized Officer, acting singly, is hereby authorized and directed to give any such approval, consent, direction, notice, order, request, or other action and to execute such documents and take any such action which such Authorized Officer may deem necessary or desirable to further the purposes of this Resolution.

Section 4. The officers, employees and agents of SANDAG are hereby authorized and directed, jointly and severally, for and in the name and on behalf of SANDAG, to do any and all things and to take any and all actions and to execute and deliver any and all agreements, certificates and documents, which they, or any of them, may deem necessary or advisable in order to consummate the transactions contemplated by the Toll Revenue Sharing Agreement and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution, the Toll Facility Act and the Toll Revenue Sharing Agreement.

Section 5. This Resolution shall take effect immediately upon its adoption and approval.

PASSED AND ADOPTED this 14th of October 2022.

Attest:

Chair

Secretary

Member Agencies: Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach, Vista, and County of San Diego.

Advisory Members: California Department of Transportation, Metropolitan Transit System, North County Transit District, Imperial County, U.S. Department of Defense, Port of San Diego, San Diego County Water Authority, Southern California Tribal Chairmen's Association, and Mexico.



NADBank Flow of Funds Visuals

Board of Directors, July 12, 2024

SR 11/Otay Mesa East Port of Entry: Binational Agreements

Attachment 6

Simple Flow of Funds (with True-Up)

Modified 50%-50% split (early years)

LEGEND

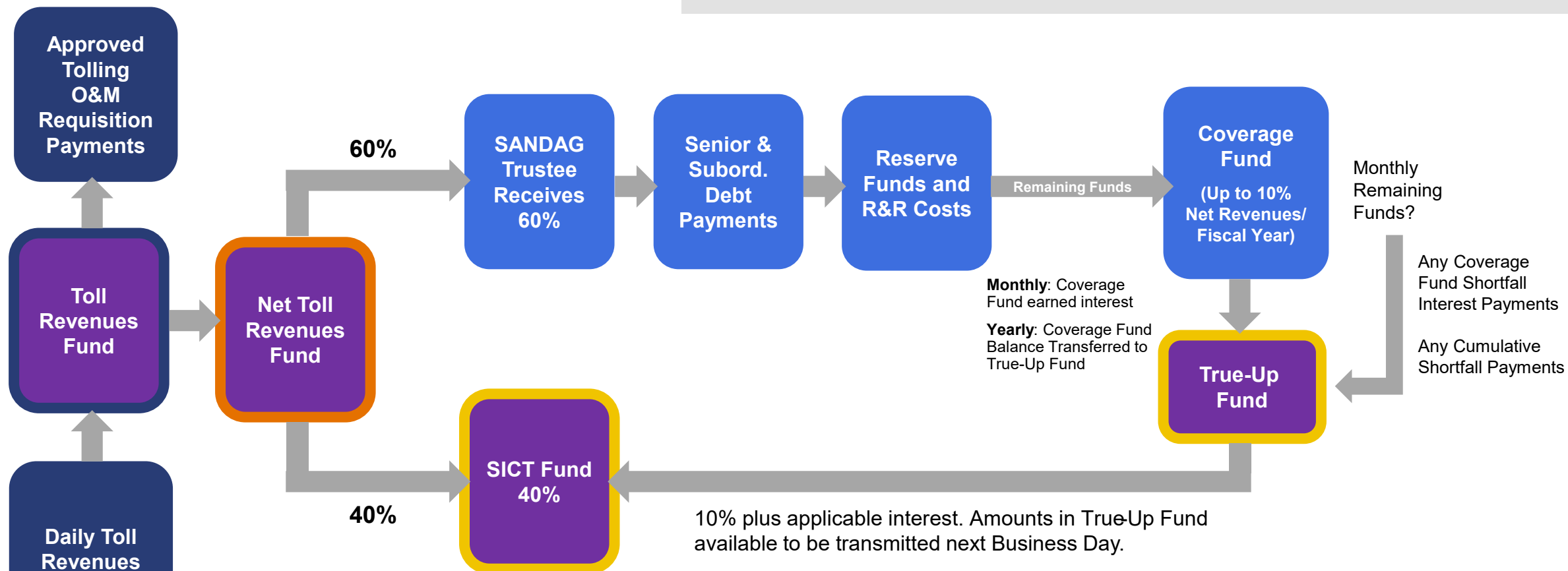
SANDAG

SANDAG
Trustee

NADBank

SICT/Mexico

SANDAG/SICT



Coverage Fund and True-Up Fund

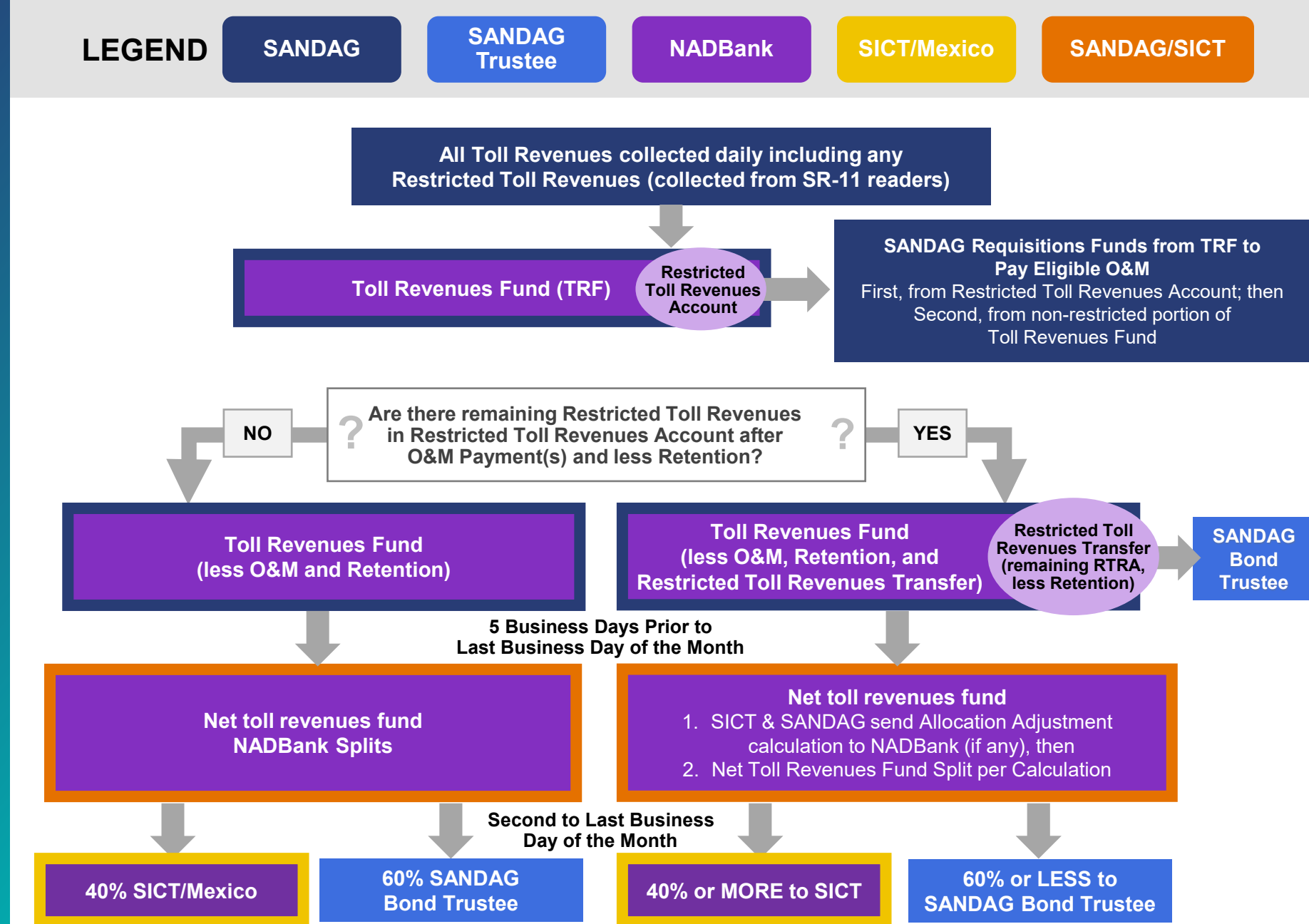
1. Coverage Fund Investment Earnings



2. Total Coverage Fund Balance

* Shortfall Payments paid from available excess Remaining Revenues after Coverage Fund fully funded. Shortfall Payments include Coverage Fund Shortfall Interest Payments and Cumulative Shortfall Liability Payments.

Flow of Funds Restricted Toll Revenues



Restricted Toll Revenues

Example

Unrestricted Toll Revenues	\$9,000
Restricted Revenues	\$1,000
Total Toll Revenues	\$10,000
 Tolling O&M Paid with Restricted Toll Revenues	 \$500
Net Revenues Before Transfer	\$9,500
 Restricted Toll Revenues Transfer to SANDAG Bond Trustee (to be used for FHWA eligible purposes)	 \$500
Net Revenues After Transfer	\$9,000

	What Mexico Should Get in this Situation	%	What Mexico Would Get without Adjustment (Unfair)	%	SICT and SANDAG Adjustment Direction to NADBank (Fair)	%
Total	\$9,500		\$9,000		\$9,000	
SANDAG	\$5,700	60%	\$5,400	60%	\$5,200	58%
Mexico	\$3,800	40%	\$3,600	40%	\$3,800	42%

Discussion Memo

Binational Agreements for the SR 11/Otay Mesa East Port of Entry Project

The report describes three proposed agreements that are needed to finance and operate the Project.

Amendment to Toll Sharing Agreement

The first agreement is a proposed amendment to the historic Toll Sharing Agreement that SANDAG signed October 24, 2022. This amendment, which is referred to as the Toll Allocation Agreement, is needed to confirm that the primary toll readers will be placed on the Mexico-side of the border and that a solely electronic (cashless) system will be used, which were not included in the original agreement. The decision to use Mexico-side toll readers was made to be in better accord with FHWA's view of relevant laws and regulations. Mexico-side toll readers will permit greater flexibility in the use of collected tolls. SANDAG, Caltrans, and FHWA have recently finalized a Memorandum of Understanding that confirms that tolls collected from the Mexico-side equipment will not be subject to certain use restrictions and can be shared with Mexico.

The amendment also provides that SANDAG will pay Mexico interest *during the year* (either as investment earnings or at the Secured Overnight Financing Rate) for the extra 10% in toll revenues that SICT has permitted SANDAG to use each month in the early years of toll operations (to help with the US-side project financing and debt coverage). The amendment also changes the name of the agreement to Toll Allocation Agreement.

Custodial Agreement with NADBank

The proposed Custodial Agreement designates the North American Development Bank (NADBank) as the Custodian of the funds for both countries. NADBank will hold the funds on behalf of both countries to track and then disperse the toll revenues.

Toll Governance Agreement

The third proposed agreement is the Toll Governance Agreement, which creates and structures the Binational Working Group. The SANDAG Board is the Project's toll authority and the Binational Working Group (which the original Toll Allocation Agreement contemplated) will make recommendations to the BOD regarding toll policy and toll governance. The Binational Working Group also sets the operations and maintenance budget for ratification by the BOD. The Toll Governance Agreement describes how the working group would function, including its proposed Brown Act requirements, membership, and responsibilities.

These agreements were presented for information to the Board of Directors on May 10, 2024. On June 28, 2024, the Borders Committee recommended that the BOD authorize execution of the three agreements. A detailed summary of the agreements is included in the report and actual documents for signature are included as appendices to the report.



SR 11 / OTAY MESA EAST

PORT OF ENTRY

Binational Agreements
Board of Directors
July 12, 2024

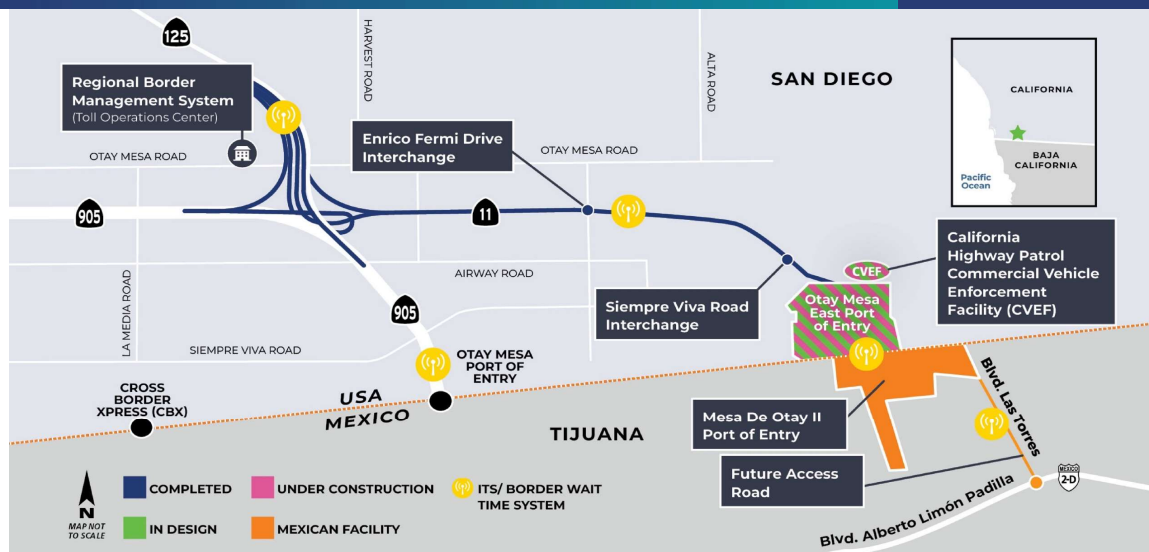
Agenda

- Project Overview
- Recent Binational Agreements
- Amended and Restated Toll Allocation Agreement
- Custodial Agreement
- Toll Governance Agreement
- Questions and Discussion

Project Overview

Project Overview

Corridor Cost: \$1.3B



Summary of Project Benefits



Reduce Greenhouse Gas Emissions and Air Pollution



Fuel Economic Growth



Reduce Wait Times



Strengthen Border Security and Resiliency



Bolster Binational Trade



Enhance Regional Mobility



Advanced Traveler Info and Border Management System



ZEV Infrastructure and Services



Benefit Cost Ratio 5:1

SANDAG | **Caltrans** | 5

SANDAG | **Caltrans**

Recent Binational Agreements

2021 MOU Key Terms

- Non-binding
- Single toll collection point: SR 11
- Variable tolls for congestion management
- Interoperable ITS on both sides
- MX: construct POE and access roads by 2024
- SANDAG/Caltrans: Access Roads by 2021; POE by 2024



Caltrans SANDAG | 7

2022 Toll Revenues Agreement

- Binding Agreement (40+ years)
- Toll Authority: SANDAG
- Single Toll Collection Point for NB and SB
- Future Binational Working Group to advise SANDAG/approve budget
- Modified Split (60/40) of revenues
- NADBank as Custodian
- Disputes: NAFTA 2.0 process



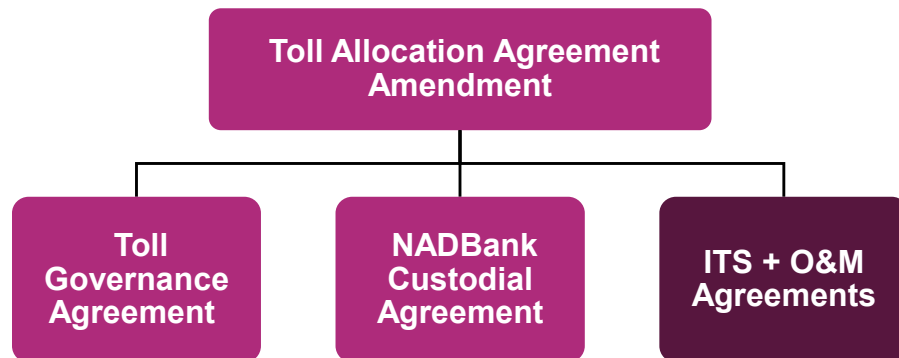
Caltrans SANDAG | 8

Binational Agreements

Proposed Execution Date:

July 2024

December 2024



 **Caltrans**  **SANDAG** | 9

Amended and Restated Toll Allocation Agreement

Overview

Amended and Restated Toll Allocation Agreement

Original Agreement

- No interest on 10% until failure to repay in full *at the end of each FY*
—Then interest at SOFR
- Single Toll Collection Point on SR 11

Amended Agreement

- Interest on 10% *as received during the year* (either as actual investment earnings or, if amounts used by SANDAG, SOFR)
- Single Toll Collection Point replaced with:
 - Roadway Toll Collection System including toll readers on Mexico side;
 - Toll Transaction Location: SANDAG Backoffice System (TBD)

Amended and Restated Toll Allocation Agreement

Original Agreement

- Toll Revenue **Sharing** Agreement
- Cash and electronic payments
- NADBank as Custodian: 40+ years
- Bond Trustee: US Bank
- Binational Working Group: *non-governmental* administrative body
- SANDAG paid SICT directly for any shortfalls on 10% repayment

Amended Agreement

- Toll Revenue **Allocation** Agreement
- Cashless (fully electronic)
- NADBank *or its successor* for 40+ years
- Bond Trustee: SANDAG's choice
- Binational Working Group: administrative body subject to Brown Act
- All shortfall payments paid to NADBank via True-Up Fund

Amended and Restated Toll Allocation Agreement

Interest on 10%

Interest to Mexico on 10%

During the Fiscal Year



Coverage Fund
Investment
Earnings



Shortfall Liability:
SOFR

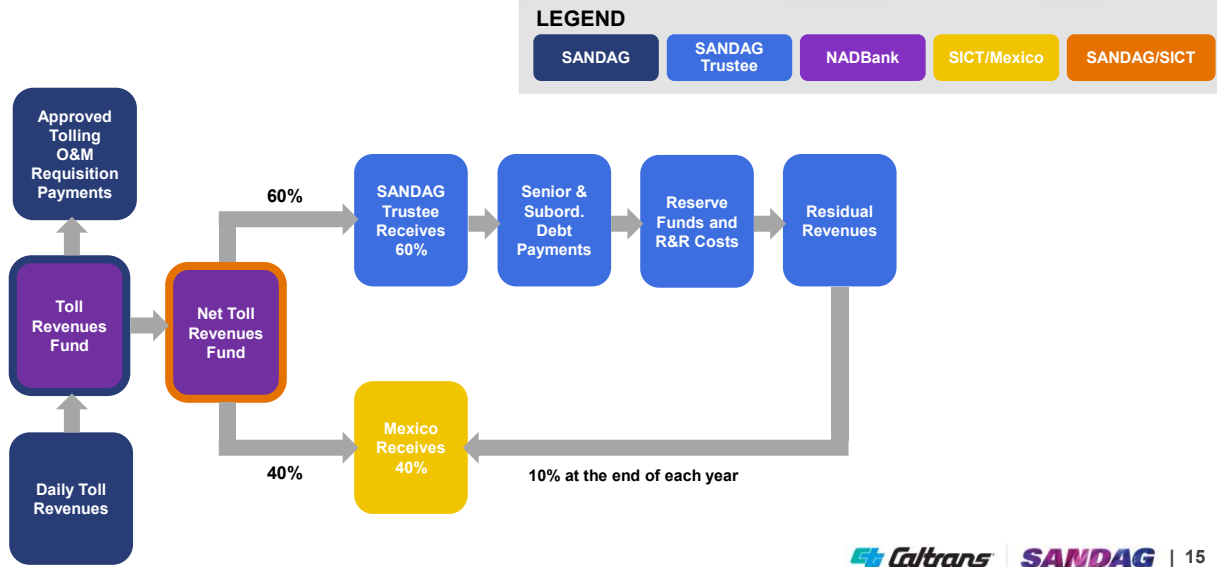
After the Fiscal Year



Cumulative
Shortfall Liability:
SOFR

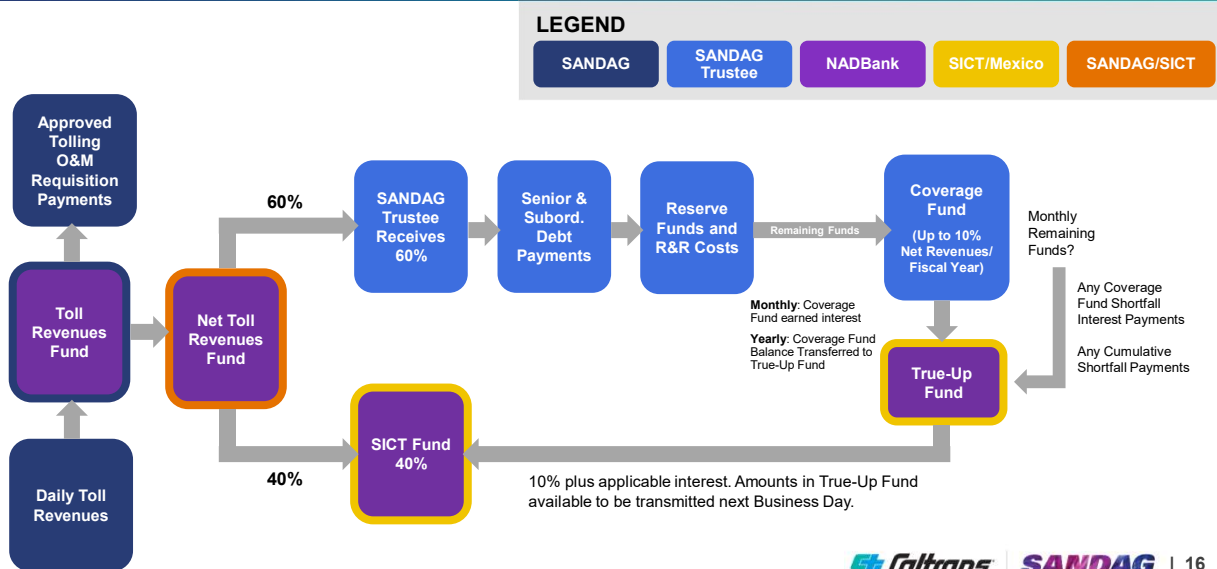
Flow of Funds (Original Agreement)

Modified 50%-50% Split (Early Years)



Simple Flow of Funds (with True-Up)

Modified 50%-50% Split (Early Years)

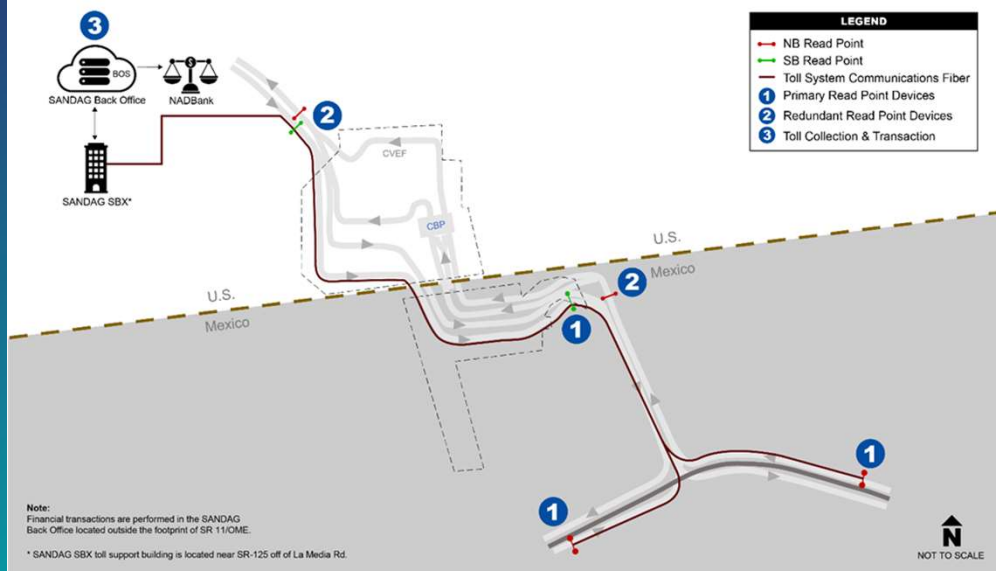


Amended and Restated Toll Allocation Agreement

Restricted Toll Revenues Account

Restricted Toll Revenues

1. Primary toll readers in Mexico.
2. Redundant toll readers on SR 11 to collect tolls if Mexico readers are not operating properly
3. Toll revenues generated from tags read through SR 11 readers are "Restricted Toll Revenues," subject to FHWA regulations



Custodial Agreement

Role of NADBank

- Custodian of funds for both countries
- Facilitates transparency and trust
- International organization established by U.S. and Mexico governments to:

“support infrastructure projects and provide technical assistance for projects that preserve, protect or enhance the environment to advance the well-being of the people of both countries”



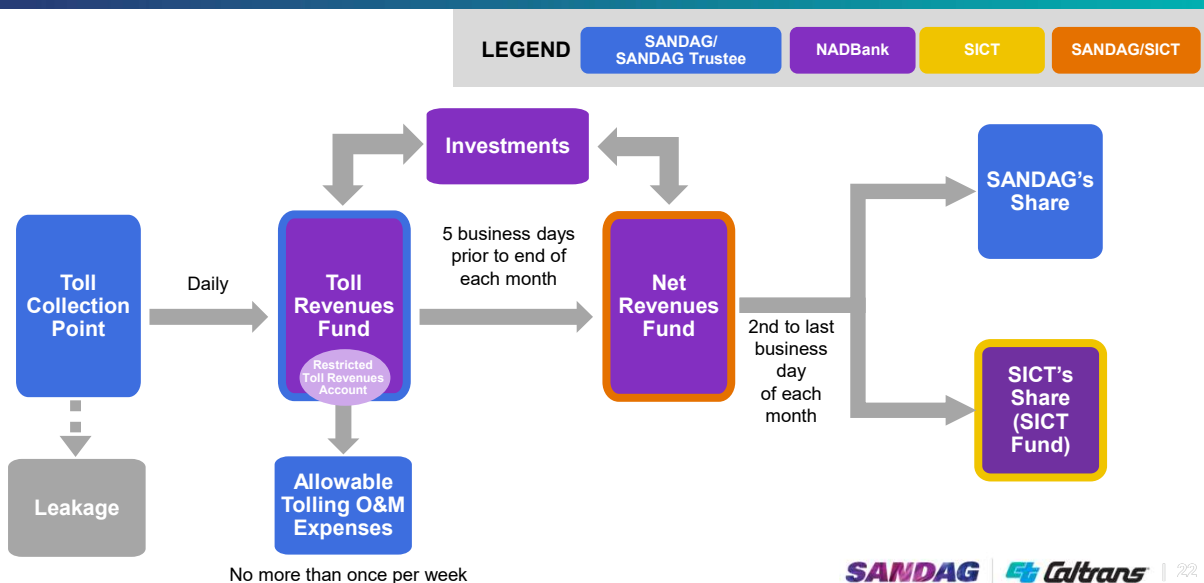
 U.S.A. Board Members	 Mexico Board Members
Secretary of the Treasury , Janet Yellen	Secretario de Hacienda y Crédito Público , Rogelio Ramírez de la O
Secretary of State , Antony Blinken	Secretario de Relaciones Exteriores , Alicia Barcena Ibarra
Administrator of the EPA , Michael S. Regan	Secretaria de Medio Ambiente y Recursos Naturales , María Luisa Albores González
U.S. Border State Representative , Mary E. Gonzalez (Texas House of Representatives House District 75)	Mexican Border State Representative , Fernando Renoir Baca Rivera (Titular de la Unidad de Coordinación con Entidades Federativas, Secretaría de Hacienda y Crédito Público)
U.S. Border Resident Representative , Denise Moreno Ducheny (Public Policy Consultant, The Southern Group)	Mexican Border Resident Representative , Carlos de la Parra Rentería (Founding Partner, Luken Center for Strategies on Water and Environment)

NADBank Custodial Agreement

- Parties: SANDAG, SICT, and NADBank
- Binding Agreement
- Duration: Consistent with Toll Allocation Agreement (40+ years)
- Purpose
 - Designates NADBank as the Custodian of toll funds;
 - Creates funds identified in the Toll Allocation Agreement;
 - Defines NADBank's role in the flow of funds (including effecting split and 10% repayment from SANDAG to SICT)
- Cost (paid after toll operations commence)
 - \$25,000 initial fee
 - \$25,000 annual fee (annual CPI adjustment)

 **SANDAG** | 21

NADBank Flow of Funds (Simple Monthly)



Toll Governance Agreement

Toll Governance Agreement

- Parties: SANDAG and SICT
- Binding Agreement
- Consistent with Tolling Allocation Agreement (40+ years)
- Purpose
 - Creates and structures Binational Working Group (BWG), a Brown Act body
 - Defines BWG's responsibilities

Binational Working Group

Details

Membership

- Appointed by Authorized Reps (SANDAG: CEO, SICT: Minister, Caltrans: D11 Director)
- 6 Voting Members: SICT (3) & SANDAG (3, one of whom is from Caltrans)
 - Members intended to be technical experts in tolling, finance, border capital planning, or the Project
- 4 alternates: SICT (2); SANDAG (2)
- Potential advisory members (appointed by BWG)

Leadership: Elected by and from BWG

- Chair & Vice-Chair
 - 2-year terms (alternate between SICT and SANDAG)
 - Set agenda; call additional meetings

Binational Working Group

Details

Meetings

- In San Diego County; in accord with Brown Act
- At least 2 meetings/year
 - More if called by Chair and Vice-Chair
 - Less if agreed to by BWG
- SICT reps reimbursed for travel expenses from Tolling O&M Budget

Action

- Quorum: 4 of 6
- Action: majority vote
- Roberts Rules of Order, or as otherwise agreed by the BWG

Binational Working Group Responsibilities

- Approve annual Tolling O&M Budget;
- Advise BOD on toll setting/toll policy at least every two years
- Evaluate make recommendations to BOD re: toll operations and NADBank's performance
- Conducting audits, studies, and analysis related to the tolling operations, subject to available funds

Tolling O&M Budget

- **September 15:** SANDAG submits next FY proposed Tolling O&M Budget to the BWG
- **By January 15:** BWG submits the approved Tolling O&M Budget to SANDAG's BOD for ratification with SANDAG Budget
- **SANDAG's BOD has the power to amend such budget:**
 - For unforeseen expenses or inaccurate assumptions (up to 7.5% increase in any Fiscal Year); or
 - To avoid default under the Indenture or potential TIFIA Loan Agreement.