



Board of Directors Agenda

Friday, January 10, 2025

10:30 a.m.

Welcome to SANDAG. The Board of Directors meeting scheduled for Friday, January 10, 2025, will be held in person in the SANDAG Board Room. While Board 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/84216740953>

Webinar ID: 842 1674 0953

To participate via phone, dial a number based on your current location in the US:

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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 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.

If you desire to provide in-person verbal comment during the meeting, please fill out a speaker slip, which can be found in the lobby. If you have joined the Zoom meeting by computer or phone, please use the "Raise Hand" function to request to provide public comment. On a computer, the "Raise Hand" feature is on the Zoom toolbar. By phone, enter *9 to "Raise Hand" and *6 to unmute. Requests to provide live public comment must be made at the beginning of the relevant item, and no later than the end of any staff presentation on the item. The Clerk will call on members of the public who have timely requested to provide comment by name for those in person and joining via a computer, and by the last three digits of the phone number of those joining via telephone. Should you wish to display media in conjunction with your comments, please inform the Clerk when called upon. The Clerk will be prepared to have you promoted to a position where you will be able to share your media yourself during your allotted comment time. In-person media sharing must be conducted by joining the Zoom meeting on the personal device where the content resides. Please note that any available chat feature on the Zoom meeting platform should be used by panelists and attendees solely for procedural or other "housekeeping" matters as comments provided via the chat feature will not be retained as part of the meeting record. All comments to be provided for the record must be made in writing via email or speaker slip, or verbally per the instructions above.

In order to keep the public informed in an efficient manner and facilitate public participation, SANDAG provides access to all agenda and meeting materials online at sandag.org/meetings. Additionally, interested persons can sign up for email notifications at sandag.org/subscribe. A physical copy of this agenda may be viewed at the SANDAG Toll Operations Office, 1129 La Media Road, San Diego, CA 92154, at any time prior to the meeting.

To hear the verbatim discussion on any agenda item following the meeting, the [audio/video](#) recording of the meeting is accessible on the SANDAG website.

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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.

Esta reunión se llevará a cabo en inglés, y se ofrecerá interpretación simultánea en español. Se ofrecerá interpretación en otros idiomas previa solicitud a ClerkoftheBoard@sandag.org al menos 72 horas antes de la reunión.

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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, January 10, 2025

Elections

+1. SANDAG Board Leadership Election 2025-2026

Approve

SANDAG Board Chair

The Board of Directors is asked to conduct the SANDAG Board Officer election for calendar years 2025-2026.

[SANDAG Board Leadership Election 2025-2026](#)

[Att. 1 - Statement of Interest: City of Imperial Beach Councilmember Jack Fisher](#)

[Att. 2 - Statement of Interest: City of Del Mar Mayor Terry Gaasterland](#)

[Att. 3 - Statement of Interest: City of Solana Beach Mayor Lesa Heebner](#)

[Att. 4 - Statement of Interest: City of San Diego Council President Joe LaCava](#)

[Att. 5 - Statement of Interest: City of Santee Mayor John Minto](#)

Comments and Communications

2. Non-Agenda Public Comments/Member Comments

Members of the public shall have the opportunity to address the Board of Directors on any issue within the jurisdiction of SANDAG that is not on this 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 and announcements under this agenda item.

Consent

+3. Approval of Meeting Minutes

Approve

Francesca Webb, SANDAG

The Board of Directors is asked to approve the minutes from its December 13, 2024, meeting.

[Meeting Minutes](#)

+4. Meetings and Events Attended on Behalf of SANDAG

Information

Francesca Webb, SANDAG

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

[Meetings and Events Attended on Behalf of SANDAG](#)

+5. Review of Draft Board Agendas

Approve

Ariana Galvan, SANDAG

The Board of Directors is asked to approve the draft agendas for the January 24 and February 14, 2025, Board of Directors meetings.

[Draft Agenda 1-24-25](#)

[Draft Agenda 2-14-25](#)

Reports

- +6. Otay Mesa East Port of Entry Project** Approve
[Presentation](#)

- +6A. Approval of Proposed Contract Award for the Otay Mesa East Port of Entry Project** Approve
Kelly Mikhail, SANDAG

The Board of Directors is asked to authorize the Chief Executive Officer to: Award a contract not to exceed \$3.5 million to Atkinson/Clark Joint Venture for Construction Manager/General Contractor Pre-Construction services for the Otay Mesa East Port of Entry project as detailed in this report.

[Approval of Proposed Contract Award for the Otay Mesa East Port of Entry Project](#)

- +6B. Otay Mesa East Federal Project Agreement** Adopt
Maria Rodriguez and Betsy Blake, SANDAG; Nikki Tiongco, Caltrans

The Board of Directors is asked to adopt Resolution No. 2025-09, approving and authorizing the execution and delivery of the Federal Project Agreement, related future amendment to support Project Phasing, and related Donation Acceptance Agreements with Caltrans, U.S. General Services Administration, and U.S. Customs and Border Protection.

[Otay Mesa East Federal Project Agreement](#)

[Att. 1 - Summary of FPA Essential Terms](#)

[Att. 2 - Draft FPA](#)

[Att. 3 - Otay Mesa East - Federal Project Agreement Resolution](#)

Adjournment

7. Adjournment

The next Board of Directors meeting is scheduled for Friday, January 24, 2025, at 9 a.m.

+ next to an agenda item indicates an attachment

SANDAG Board Leadership Election (2025-2026)

Overview

Consistent with the biennial nomination and election process set forth in the SANDAG Bylaws, the election of SANDAG Board Leadership is scheduled to take place at the Board of Directors meeting on January 10, 2025.

Article V of the [SANDAG Bylaws](#) outlines the Board Officer positions and duties; including the following:

The Board of Directors shall have as officers a Chair, First Vice Chair, and Second Vice Chair who are primary members of the Board.

- a. The Chair shall preside over Board and committee meetings and have general supervision of Board and committee affairs.
The Chair shall sign all official documents when directed to do so by the Board and committees respectively.
- b. The First Vice Chair shall perform the duties of the Chair in his or her absence and perform any duties that the Chair may require. The Second Vice Chair shall perform the duties of the First Vice Chair in his or her absence and perform any duties that the Chair may require.

Action: **Approve**

The Board of Directors is asked to conduct the SANDAG Board Officer election for calendar years 2025-2026.

Fiscal Impact:

Board expenses are budgeted to Overall Work Program Project No. 9000100.

Schedule/Scope Impact:

All officers will begin their term of office immediately upon election by the Board and serve a term of two years or until their successors are elected.

Key Considerations

All officers of the Board shall be from different subregions. Only candidates who are primary members nominated from the floor on the day of election may be considered for office.

Nominations for any office may be made by Board Members at the election meeting by making a motion and second from the floor. Per Public Utilities Code 132352.3, election of the Board Chair and Vice Chair will be by weighted vote only, with 51% of the total weighted vote required for election. Election of the Second Vice-Chair will be per the normal voting process (tally with option for potential weighted vote).

Interested Board members were invited to submit a statement of interest to be made available to the Board of Directors and the public as part of the January 10, 2025, meeting agenda. All statements that were received before the agenda posting are attached to this report.

Submission of a statement of interest was optional – candidates for leadership will solely be determined based on nominations of eligible Board members at the time of the election.

Next Steps

All officers will begin their term of office immediately upon election by the Board and serve a term of two years or until their successors are elected.

Victoria Stackwick, Chief of Staff

- Attachments:
1. Statement of Interest: City of Imperial Beach Councilmember Jack Fisher
 2. Statement of Interest: City of Del Mar Mayor Terry Gaasterland
 3. Statement of Interest: City of Solana Beach Mayor Lesa Heebner
 4. Statement of Interest: City of San Diego Council President Joe LaCava
 5. Statement of Interest: City of Santee Mayor John Minto



**SANDAG BOARD OFFICER
STATEMENT OF INTEREST
CALENDAR YEARS 2025-2027**

Position (more than one box can be marked):

☐ Chair

☐ First Vice Chair

☒ Second Vice Chair

Applicant Name	Jack Fisher
Local Jurisdiction	Imperial Beach
Elected Official Title	Councilmember District 2

Date Current Term of Office Expires 12/28

INTEREST IN SERVING ON SANDAG

Attach separate pages as needed (not to exceed 3 pages in addition to this form).

1. Why do you want to serve as a SANDAG Board Officer?

As a resident of Imperial Beach since 1976, I am aware of the logistical challenges that residents face in using public transportation as a practical means of commuting. My perspective as a leader from a small coastal town in the Southern region would be a value to the Board. I'm politically neutral and strive to do what is best for the entire region.

2. What is your vision for SANDAG over the next five years?

To deliver current projects and to move forward on projects that have been promised to ease traffic burdens in the central and north counties (I-15, 78, 76 and their respective connectors). To be more forward in using public relations to highlight the positive impact that SANDAG is making in the region and to be more transparent and forthcoming of information of past negatives that have shown SANDAG as a failing agency. Continued ability to have open dialogue at Board and other subcommittee meetings with representatives and staff to move the work forward.

SANDAG EXPERIENCE

Please list current and prior involvement in SANDAG activities, including membership on Board, Policy Advisory Committees, and working groups.

Group or Activity	Time Period
SANDAG representative to the National Association of Regional Councils	March 2023-Current
SANDAG Board or Directors committee to interview and hire a new CEO of SANDAG	April 2024-July 2024

OTHER PUBLIC AGENCY EXPERIENCE

Please list current and prior involvement in other public agency activities, including membership of boards, councils, or committees.

Group or Activity	Time Period
Imperial Beach City Councilmember District 2 (2 Terms)	December 2020-December 2028

Signature Jack Fisher Date December 20, 2024

Please return completed form by 5 p.m. on Friday, December 30, 2024, to:

SANDAG

Attn: Tessa Lero, Clerk of the Board
401 B Street, Suite 800
San Diego, CA 92101-4231

E-mail: Tessa.Lero@sandag.org

Tel: (619) 699-1991

Cell: (619) 405-9334

Fax: (619) 699-1995

All information submitted will be included in the agenda packet for the January 13, 2023 Board of Directors meeting.



**SANDAG BOARD OFFICER
STATEMENT OF INTEREST
CALENDAR YEARS 2025 - 2026**

Position (more than one box can be marked):

☒ Chair

☒ First Vice Chair

☒ Second Vice Chair

Applicant Name	Terry Gaasterland
Local Jurisdiction	City of Del Mar
Elected Official Title	Mayor / Council Member

Date Current Term of Office Expires 12/31/2026

INTEREST IN SERVING ON SANDAG

Attach separate pages as needed (not to exceed 3 pages in addition to this form).

1. Why do you want to serve as a SANDAG Board Officer?

Four years on the SANDAG Board (2021 - 2024) have taught me the importance of SANDAG's role as the primary regional forum for transportation planning and housing needs assessment. Policy decisions at the Board level can affect each member jurisdiction in different and sometimes conflicting ways. As a SANDAG Board Officer, **I will seek to bring balance to Board discussions and push for creative ways to leverage SANDAG's exceptional data science capabilities to ensure that regional planning is fair to all jurisdictions**, with focus on the needs of both higher and lower density areas. In 2021, as Mayor of the City of Del Mar, I pledged to seek consensus and foster open discussion to find solutions that could garner a super-majority or unanimous vote. Since then, our Council has successfully addressed many major challenges facing Del Mar with unanimous votes over 95% of the time. I pledge to seek consensus as a SANDAG Board Officer as well. I am committed to open, balanced discussion.

As a SANDAG Board Officer from a Small City, I will help ensure that the needs of our smaller cities, our coastal areas, and our North County region will also be addressed in a fair and equitable manner. We have a large and diverse County. Thus, we must all work together with our regional partners to find workable solutions to everyone's transportation and housing challenges.

2. What is your vision for SANDAG over the next five years?

Our regional transportation planning process must seek to meet the needs of residents in all jurisdictions and create infrastructure that reduces travel time, eliminates stress points and bottlenecks, and adds much needed redundancy to the network. New public

transportation must be balanced with much needed lanes for highways and major roads. For public transportation to be useful to everyone in the region, convenient parking at trolley, train, and major bus stops is essential. **Private vehicles need to be included and considered part of the solution, not set aside and discouraged through increased congestion.**

An **improved bus system in which MTS and Breeze routes interface seamlessly** is essential. Current routes have few east-west regional buses and fail to meet the needs of **students** at all educational levels. The lack of synergy between MTS and Breeze leaves major high schools with no bus route at all. **More frequent and smaller buses** will be faster and more flexible, and cancellations will have less impact. We need a seamless regional bus system with **vehicles that emit little or no greenhouse gases.**

We need to pursue incentives and **supporting infrastructure for vehicles that use renewable energy sources.** A **network of charging stations** with superchargers throughout San Diego County is an essential part of this. SANDAG can leverage lessons learned and breakthroughs at UCSD as the campus pursues **hydrogen fuel cells** as a primary source of energy to move vehicles and power buildings. This is happening now.

Reduction of Vehicle Miles Traveled (VMT) has been the metric to measure the benefits of new transportation plans. **We need alternative metrics that reflect the realities of travel throughout the San Diego region,** for example, reducing travel time (“Vehicle Hours Traveled”, VHT) by reducing road congestion, speeding up trips, and increasing transfers between private and public modes by making park-and-go seamless with well-placed parking and drop-off facilities. The Blue Line Trolley is underutilized. Let’s analyze what impedes use of the Blue Line’s La Jolla stations and improve future interchanges.

In the near future, **freight** will move into, out of, and through the San Diego region in new ways when the highly automated Otay Mesa East border crossing is completed. The **increased capacity and efficiency of cross-border trucking** will fuel regional economic growth and alter travel patterns for freight. The next RTP in 2025 will be an opportunity to rethink patterns of movement for freight in our region, including establishing **well-placed freight transfer stations** in east county to load freight from trucks to trains for northward and eastward travel.

San Diego County’s eighteen cities and numerous communities in the unincorporated County are incredibly diverse with open spaces adjacent to dense village downtowns. Our communities blend large, small, and multi-family homes to meet many value systems and many types of households. The desert and mountains to the east and the beaches and coastal bluff trails to the west offer everyone who lives or works in the region much to enjoy and a plethora of destinations. Therefore, our **travel patterns are a rich, interconnected web** – a mesh. The 2025 RTP and upcoming regional housing needs assessment (RHNA) will need to acknowledge and embrace our region’s **mesh of travel trips.**

The next two years will be a critical time to work with the State’s Department of Housing and Community Development (HCD) to **define realistic criteria for the 7th Cycle housing needs assessment that reflect regional patterns of growth and preserve existing lower cost housing.** The Board came together unanimously in 2024 to express to HCD that the 6th Cycle is unrealistic. We need to help HCD understand our region’s needs and what will work here. If we can revisit and revise the current 6th Cycle housing allocation together with HCD, that will benefit the entire region.

SANDAG is well positioned to respond to our region's diverse needs. **SANDAG's Data Science team** has brought together **unprecedented data resources to guide and inform planning**. With serious computational muscle in place and masterful informaticians building dynamic temporal and spatial models from the data, it is now possible to use these resources creatively and with open minds to transform how regional transportation planning is done. The integration of cell phone locations, employment locations, and residence locations is now the foundation for a dynamic network model that can drive identification of unmet needs, enable timely revisions, and help the SANDAG Board be responsive, equitable, and fair in our policy-making at an entirely new level of performance.

For all of this to work, **we must continue to avoid the weighted vote as we have done in 2023 and 2024**. We need to listen to each other and reach consensus solutions. During 2021 and 2022, regular use of the weighted vote undermined good will on the Board and shifted regional plans toward the benefit of a subset of the region at the expense of the rest of the region. It is my hope that the SANDAG Board will continue to pursue balanced planning that treats all jurisdictions and all residents' needs equitably and fairly.

Funding for infrastructure improvements will drive what will be done. Due to the past actions of the Board, dependence on a regional Road Use Charge will be absent from future RTP versions. **Future transportation plans must be inclusive and address needs of every jurisdiction in the region**. Projects will need to be prioritized. To succeed, their benefits will need to be clear to residents, with agreement and endorsement from all SANDAG Board members. The need for broad agreement among Board members is an important reason to move away from the weighted vote and to seek consensus instead. **We need transportation solutions tailored to work throughout the San Diego region**.

SANDAG EXPERIENCE

Please list current and prior involvement in SANDAG activities, including membership on Board, Policy Advisory Committees, and working groups.

Group or Activity	Time Period
<u>Member, SANDAG Board of Directors</u>	<u>Jan 2021 – present</u>
<u>Member, SANDAG Regional Planning Committee</u>	<u>Jan 2021 – Dec 2022</u>
<u>Alternate, SANDAG Shoreline Preservation Working Group</u>	<u>Jan 2019 – present</u>
<u>Member, SANDAG Borders Committee</u>	<u>Jan 2023 – present</u>

OTHER PUBLIC AGENCY EXPERIENCE

Please list current and prior involvement in other public agency activities, including membership of boards, councils, or committees.

Group or Activity	Time Period
<u>Mayor, City of Del Mar (rotation)</u>	<u>Dec 2020 – Dec 2021</u>
<u>Mayor, City of Del Mar (rotation)</u>	<u>Dec 2024 – present</u>
<u>Council Member, City of Del Mar</u>	<u>Dec 2018 – present</u>
<u>Member or Alternate, NCTD Board of Directors</u>	<u>Jan 2020 – Dec 2023</u>
<u>Chair, Sea Level Rise Technical Advisory Committee, Del Mar</u>	<u>Aug 2014 – Oct 2018</u>

Signature Theresa Gaasterland Date December 31, 2024

Please return the completed form by 5 p.m. on Tuesday, December 31, 2024, to:

clerkoftheboard@sandag.org

All information submitted by this time will be included in the agenda packet for the January 10, 2025 Board of Directors meeting.



**SANDAG BOARD OFFICER
STATEMENT OF INTEREST
CALENDAR YEARS 2025 - 2026**

Position (more than one box can be marked):

☒ Chair

☐ First Vice Chair

☐ Second Vice Chair

Applicant Name	Lesla Heebner
Local Jurisdiction	Solana Beach
Elected Official Title	Mayor

Date Current Term of Office Expires 2028

INTEREST IN SERVING ON SANDAG

Attach separate pages as needed (not to exceed 3 pages in addition to this form).

1. Why do you want to serve as a SANDAG Board Officer?

AND

2. What is your vision for SANDAG over the next five years? *(below is my response to both questions)*

I've always been very proud to be a SANDAG Board member. Yet over the past of couple years as we've all discovered what bad shape the SANDAG organization was in, I became a very disappointed and disillusioned Board member. Due to a series of bad management decisions, the organization that had been held in such high esteem by so many for so long failed us—it failed the Board and the public. Lack of procedures, processes and training led to sloppy record keeping, opaque decision-making and a domino effect of critically bad consequences.

Over the past few years, a number of audits and investigations detailed the extent of the problems and made comprehensive suggestions to rectify the overwhelming problems identified with contracts, toll operations, business practices, purchasing procedures, lines of authority and delegation, transparency and more.

With the arrival of new CEO Mario Orso, an executive with the grounded sensibilities of an experienced manager, we have embraced these remedies, flattened the organization, re-organized departmental responsibilities, brought in subject matter experts where needed, and instituted a series of curative actions to right the SANDAG ship. This is strengthening the organization, infusing our employees with new enthusiasm and hopefully, beginning to regain the trust of the public, and a sense of pride again amongst all Board members.

At the same time, while Board morale has improved due to the past Chair's promise to not use the weighted vote, we have work to do to ensure that we all feel we are heard and our viewpoints given due consideration. (It should come as no surprise that I, too, pledge not to use the weighted vote.)

Additionally, the public has felt shut out and disrespected by the reduction in speaker time limits. Part of that had to do with the sheer number of commenters and the need to manage our agenda so we could get business done while we retained a quorum of the Board. Part was the bitter nature of some of the comments, many of which did not contribute to the matter under consideration. Did the former lead to the latter? I will provide more time (2 minutes each) to public commenters in the hope that will allow adequate time for cogent, relevant commentary on agenda and non-agenda items.

It is my intention to support our CEO in his efforts to improve and strengthen the internal workings of the organization, ensure the Board is fully informed on all issues as they arise, review and revise together our Board Policies, and the charters of Committees and Working Groups as needed; cooperate fully with our Independent Auditor and others looking into the agency; hire the Board's Independent Counsel while also ensuring the organization is properly staffed with legal expertise; and support the efforts to implement as many of the Corrective Actions identified by auditors and investigators as can realistically be done over the next two years.

As a Board, we need to produce a compliant Regional Transportation Plan Update this next year. This means we will all need to understand the State's GHG reduction strategies as the mandates they are, and work together to create a plan that does not exceed targets while improving our transportation system so that it works for all—whatever the mode of travel or location in the County—within those targets and within our means. This will entail a detailed look at our budget, our revenue sources and a sober assessment of the priority and timeline of our many projects as well as their GHG and VMT outputs.

It is also my intention to work toward 6th Cycle RHNA Reform at the State level so our diverse and unique Cities avoid the punishment of By-Right status for all multi-family projects inherent in SB 35/SB 423's June 2025 deadlines. Ideally a region-wide lens will allow us to site housing in the locations that make the most sense, such as near job centers, universities, hospitals and corporate headquarters as well as commuter lines. Jurisdictions making a good faith effort to build housing should be acknowledged and not penalized. During this historic time of rising costs and materials shortages, attempting to correct decades of housing shortages in one RHNA Cycle by throwing out proper planning isn't realistic or fair to the future of our region.

Finally, why do I think I'm qualified to be your Chair and help to advance this vision? First, I have the experience. I have been a Primary Board member for 14 years (2006—2016; 2020—present), have served two years as 2nd Vice Chair, previously served as Chair of the Regional Planning Committee for 3 years, and have been a member of both the Borders and Transportation Committees at various times over the years. Second, I have the temperament and approach to lead this Board of 22+ members with differing perspectives and priorities. As I have demonstrated when I've recently run the Board meetings, my strength is in facilitating and encouraging respectful debate among Board members on the issues that we consider. The best decisions are made when all points of view are aired, respected and given their due consideration. This includes hearing from the public.

The focus of my approach is to achieve what is practical and beneficial for the region. I am pragmatic, unbiased, not influenced by partisan considerations and approach issues with an open mind. I bring a commitment to fostering thorough, fair-minded consideration of issues by this Board as we strengthen the organization, and would be honored to be your Chair for the next two years.

SANDAG EXPERIENCE

Please list current and prior involvement in SANDAG activities, including membership on Board, Policy Advisory Committees, and working groups.

Group or Activity	Time Period
2 nd Vice Chair	December 2022-2024
Executive Committee	2022-2024; 2010-2011
Chair, Regional Planning Committee	2013-2016
Vice Chair, Regional Planning Committee	2015
Borders Committee	2005
Transportation Committee (representing NCTD)	2006

OTHER PUBLIC AGENCY EXPERIENCE

Please list current and prior involvement in other public agency activities, including membership of boards, councils, or committees.

Group or Activity	Time Period
NCTD Primary Board member	2005-2007
NCTD Alternate Board member	2007-2016
San Dieguito River Valley JPA Primary Board member	2005-2007; 2012
San Dieguito River Valley JPA Alternate Board member	2007-2011
League of CA Cities Alternate	2005-2016; 2020-present

Signature *Lesa Heebner* Date 12/28/2024

Please return the completed form by 5 p.m. on Tuesday, December 31, 2024, to:

clerkoftheboard@sandag.org

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**SANDAG BOARD OFFICER
STATEMENT OF INTEREST
CALENDAR YEARS 2025 - 2026**

Position (more than one box can be marked):

☐ Chair

☒ First Vice Chair

☐ Second Vice Chair

Applicant Name	Joe LaCava
Local Jurisdiction	City of San Diego
Elected Official Title	Council President, San Diego City Council – District 1 Councilmember

Date Current Term of Office Expires December 2028

INTEREST IN SERVING ON SANDAG

Attach separate pages as needed (not to exceed 3 pages in addition to this form).

1. Why do you want to serve as a SANDAG Board Officer?

I would like to serve as the First Vice Chair of the SANDAG Board to help lead the agency towards its mission of finding and implementing solutions to some of our most complex regional planning issues. As SANDAG continues to transform under new leadership, I would also like to help further develop the collaboration between our 18 SANDAG Board members and several outside agencies.

My background as a civil engineer, land use consultant, and community advocate provide me decades of experience tackling capital projects that will lead us to a more sustainable future. I have served on many planning groups, community associations, boards and commissions that have provided me with a unique community perspective on our regional planning issues.

Lastly, as a San Diego City Councilmember since 2020, I've had the opportunity to serve on SANDAG in several capacities. I've had the honor to work with many of the current SANDAG Board members and I would like to continue that collaboration as I represent the City of San Diego. My recent service includes reenergizing the Regional Planning Committee as chair. As the regional MPO for our region, SANDAG has a duty to plan a sustainable future for all our region's residents. I look forward to serving as the First Vice Chair and ensuring that SANDAG is a transparent and accessible agency for our SANDAG representatives and the general public.

2. What is your vision for SANDAG over the next five years?

I envision SANDAG staying true to its mission and delivering transformative capital projects that will serve our region for decades to come. I envision a united SANDAG Board of Directors that can find common ground and work towards solutions for our region's most complex regional planning problems. I envision a SANDAG agency that leads with good governance, transparency, accountability, and meets the challenges of climate, housing and cost of living, while managing escalating costs.

SANDAG EXPERIENCE

Please list current and prior involvement in SANDAG activities, including membership on Board, Policy Advisory Committees, and working groups.

Group or Activity	Time Period
SANDAG Regional Planning Committee, Chair	1/5/24 - Current
LOSSAN Working Group (informal)	2024 - Current
SANDAG Shoreline Preservation Working Group	1/1/22 - 12/31/24
SANDAG Board (alternate)	1/12/22 - 12/10/24
Mid-Coast Corridor Transit Project Working Group	2009

OTHER PUBLIC AGENCY EXPERIENCE

Please list current and prior involvement in other public agency activities, including membership of boards, councils, or committees.

Group or Activity	Time Period
Council President, San Diego City Council	12/10/24 - Present
San Diego City Council, District 1	12/10/20 - Present
San Diego Community Power (Board Chair, 2 years)	1/1/22 - Present
San Dieguito River Park JPA (Board Chair, 2 years)	1/1/21 - Present

Signature Joe LaCava Date 12/31/2024

Please return the completed form by 5 p.m. on Tuesday, December 31, 2024, to:

clerkoftheboard@sandag.org

All information submitted by this time will be included in the agenda packet for the January 10, 2025 Board of Directors meeting.



SANDAG BOARD OFFICER STATEMENT OF INTEREST CALENDAR YEARS 2025 - 2026

Position (more than one box can be marked):

☐ Chair

☐ First Vice Chair

☒ Second Vice Chair

Applicant Name: John W. Minto
 Local Jurisdiction: City of Santee
 Elected Official Title: Mayor
 Date Current Term of Office Expires: December 2028

INTEREST IN SERVING ON SANDAG

Attach separate pages as needed (not to exceed 3 pages in addition to this form).

1. Why do you want to serve as a SANDAG Board Officer?

Serving as a board officer for the San Diego Association of Governments (SANDAG) is an opportunity I would approach with great enthusiasm and dedication. As a mayor, my commitment to the growth, sustainability, and prosperity of our city naturally extends to the broader regional landscape. SANDAG, as a Regional Metropolitan Planning Organization, plays a pivotal role in shaping the future of our communities through regional planning, transportation, environmental sustainability, and economic development. I believe serving in this capacity aligns with my vision for our city and our region, and here is why I am enthusiastic about this role.

The challenges we face as cities are increasingly interconnected. Issues such as traffic congestion, housing affordability, and environmental sustainability transcend city borders. SANDAG provides a unique platform to address these challenges collaboratively. As a board officer, I would have the privilege of collaborating closely with other regional leaders to develop solutions that benefit all communities in San Diego County. My experience as mayor has taught me the value of collaboration, and I am eager to bring that spirit to SANDAG to foster a united approach to regional challenges.

One of SANDAG's core responsibilities is regional transportation planning. Efficient, dependable, and sustainable transportation systems are essential for economic vitality and quality of life. As a mayor, I have witnessed firsthand the impact of inadequate transportation infrastructure on residents and businesses. Serving as a board officer would allow me to advocate for equitable and innovative transportation solutions that address the needs of our city while contributing to a cohesive regional network. Whether it is expanding transit options, improving roadways, or investing in active transportation infrastructure, I am committed to advancing projects that reduce congestion, improve accessibility, and promote sustainability.

The affordability and availability of housing are critical issues affecting the entire region. As a mayor, I have worked to address these challenges locally, but I recognize that regional cooperation is necessary to make a substantial impact. SANDAG's role in coordinating housing and economic development strategies is crucial. As a board officer, I would advocate for policies that promote smart growth, support affordable housing, and stimulate economic development. I believe that by aligning our efforts, we can create vibrant, inclusive communities where all residents can thrive.

As mayor, I bring a deep understanding of the unique challenges and opportunities facing our city. Serving as a board officer for SANDAG would allow me to leverage this local expertise for the benefit of the entire region. The insights gained from leading at the local level are invaluable in shaping regional strategies that are practical, effective, and responsive to the needs of our communities. By bringing a local perspective to the table, I can help ensure that regional policies and projects reflect the diverse realities of our cities and neighborhoods.

One of the most rewarding aspects of serving in public office is the opportunity to build relationships with other leaders. As a board officer for SANDAG, I would have the chance to collaborate closely with elected officials, stakeholders, and community members from across the region. These relationships are essential for fostering trust, collaboration, and mutual understanding. I am committed to building strong partnerships that advance our shared goals and create a stronger, more connected region.

The San Diego region is known for its innovation and forward-thinking approach, and SANDAG is at the forefront of these efforts. As a board officer, I would advocate for the adoption of innovative technologies and policies that enhance our region's competitiveness and resilience. I am excited about the possibilities for innovation that benefit our communities. My goal is to ensure that SANDAG continues to lead the way in shaping a future that is sustainable, and prosperous.

Serving as a board officer for SANDAG is more than a leadership role; it is an opportunity to make a lasting impact on our region. The decisions made by SANDAG's board have far-reaching implications for generations to come. As a mayor, I am deeply committed to leaving a positive legacy for our city, and I see this role as an extension of that commitment. By contributing to SANDAG's mission, I hope to help create a region that is well-positioned to meet the challenges of the future and provide a high quality of life for all residents.

Conclusion

In conclusion, my desire to serve as a board officer for SANDAG is driven by a deep commitment to regional collaboration, sustainable development, and growth. This role represents an opportunity to bring my experience, passion, and vision to a platform that shapes the future of our region. I am confident that my leadership as mayor has prepared me to contribute meaningfully to SANDAG's efforts and to collaborate with other leaders to build a stronger, more connected, and more vibrant San Diego County. Together, we can create a future that reflects the values and aspirations of all our communities. I can see a brighter future. I hope you can too.

2. What is your vision for SANDAG over the next five years?

My vision for the San Diego Association of Governments is simply to foster a strong, collaborative, and trusted Board of Directors, collaborating closely with the Executive Officers and the CEO to achieve this goal. I am committed to building honest relationships that will support our shared objectives. I aim to approach every proposed project with a mindset focused on finding solutions to ensure timely completion.

Transportation, housing, economic development, public safety, and regional border initiatives are critical priorities for our region. I am dedicated to seeing these projects through, recognizing their importance to the well-being and prosperity of our communities. By maintaining a clear vision, initiative-taking, and encouraging teamwork, I believe we can achieve measurable results that benefit everyone in our region.

SANDAG EXPERIENCE

Please list current and prior involvement in SANDAG activities, including membership on Board, Policy Advisory Committees, and working groups.

Group or Activity	Time Period
Board of Directors (Alternate)	January 2002 – January 2016
Board of Directors	January 2016 - Present
Board of Directors Executive Committee (Alternate)	January 2016 – January 2020
Boards Committee	January 2002 - January 2016
Boards Committee Chair	January 2010 – January 2016
Public Safety Committee	January 2016 - January 2021
Public Safety Committee	January 2016 – January 2020
Public Safety Committee (Vice Chair)	January 2022 - Present

OTHER PUBLIC AGENCY EXPERIENCE

Please list current and prior involvement in other public agency activities, including membership of boards, councils, or committees.

Group or Activity	Time Period
San Diego East County Economic Development Council	2002-2016
San Diego East County Economic Development Council (Chair)	2010-2016
San Diego Metropolitan Transit system	2010-2017
San Diego Metropolitan Transit System Executive Board of Directors	2010-2012
League of California Cities, San Diego Division	2002-Present
League of California Cities, State Board of Directors	2015-Present

Signature *John W. Minto*

Date: December 26, 2024

December 13, 2024, Board of Directors Meeting Minutes

[View Meeting Video](#)

Chairwoman Nora Vargas (County of San Diego) called the meeting of the Board of Directors to order at 9:03 a.m.

1. Non-Agenda Public Comments/Member Comments

Public Comments: Michael Brando, Truth, Ellen Bure, Cesar Javier, Purita Javier.

Member Comments: Mayor Rebecca Jones (City of San Marcos), Council President Joe LaCava (City of San Diego).

Consent

2. Approval of Meeting Minutes

The Board of Directors was asked to approve the minutes from its December 6, 2024, meeting.

3. Policy Advisory Committee Actions

The Board of Directors was asked to ratify the actions taken by the Policy Advisory Committees as noted in the report.

4. Regional Safety Planning Updates

This report provided an update on regional safety efforts in developing the Regional Vision Zero Action Plan.

5. FY 2024 Transportation Development Act Audit Extension Requests

The Board of Directors was asked to approve Transportation Development Act audit extension requests for the City of Santee and SANDAG until March 27, 2025, as permitted by the California Public Utilities Code and the California Code of Regulations.

6. Review of Draft Board Agenda

The Board of Directors was asked to approve the draft agenda for the January 10, 2025, Board of Directors meeting.

7. Approval of Proposed Budget Amendment and Contract Award for the Uptown Bikeways: Washington Street and Mission Valley Bikeways Project

The Board of Directors was asked to:

1. Approve the acceptance of additional funds from the City of San Diego in the amount of \$359,000;
2. Approve an amendment to the FY 2025 Program Budget for the Uptown Bikeways: Washington Street and Mission Valley Bikeway Project (CIP Project No. 1223084), increasing the total project budget by \$6.495 million; and
3. Authorize the Chief Executive Officer to award a contract to Dick Miller, Inc., for the construction of the Uptown Bikeways: Washington Street and Mission Valley Bikeways Project.

8. FY 2025 Proposed Budget Amendments for the New Regional Tolling Back Office System project on SR 125 and I-15

The Board of Directors was asked to approve an amendment to the FY 2025 Annual Program Budget for the New Regional Back-Office System project (Capital Improvement Project Nos. 1400406 and 1400407).

Public Comments: Cesar Javier, Ian Hembree, Michael Brando, Truth, Mark, Katheryn Rhodes, The Original Dra, Consuelo, Paul Jamason, Paul the Bold.

Action: Upon a motion by Mayor John Minto (Santee) and a second by Councilmember Carolina Chavez (Chula Vista), the Board voted to approve the Consent Agenda.

The motion passed.

Yes: Chairwoman Vargas, Second Vice Chair Lesa Heebner (Solana Beach), Councilmember Melanie Burkholder (Carlsbad), Councilmember Chavez, Councilmember John Duncan (Coronado), Mayor Terry Gaasterland (Del Mar), Mayor Bill Wells (El Cajon), Mayor Bruce Ehlers (Encinitas), Mayor Dane White (Escondido), Councilmember Patricia Dillard (La Mesa), Mayor Racquel Vasquez (Lemon Grove), Councilmember Luz Molina (National City), Councilmember Rick Robinson (Oceanside), Councilmember Vivian Moreno (City of San Diego), Mayor Rebecca Jones (San Marcos), and Mayor Minto.

No: None.

Abstain: None.

Absent: Imperial Beach, Poway, and Vista.

Chair's Report

9. Chief Executive Officer FY 2025 Performance Goals and Objectives

The Board of Directors was asked to provide feedback on the FY 2025 performance goals and objectives for the Chief Executive Officer.

Public Comments: Michael Brando, Truth, Mark, Cesar Javier, Paul the Bold, Katheryn Rhodes, The Original Dra, Consuelo.

Action: Upon a motion by Chairwoman Vargas and a second by Second Vice Chair Heebner, the Board of directors voted to approve the proposed FY 2025 Performance Goals and Objectives for the Chief Executive Officer.

Yes: Chairwoman Vargas, Second Vice Chair Heebner, Councilmember Burkholder, Councilmember Chavez, Councilmember Duncan, Mayor Gaasterland, Mayor Wells, Mayor Ehlers, Councilmember Dillard, Mayor Vasquez, Councilmember Molina, Councilmember Robinson, Councilmember Moreno, Mayor Jones, and Mayor Minto.

No: None.

Abstain: None.

Absent: Escondido, Imperial Beach, Poway, and Vista.

10. Year in Review

Chief Executive Officer Mario Orso; Ann Fox, Caltrans; Sharon Cooney, MTS; and Mary Dover, NCTD; presented an update on the delivery of key projects and programs in 2024.

Public Comments: Truth, Michael Brando, Mark, Cesar Javier, Paul the Bold, Katheryn Rhodes, The Original Dra, Consuelo, Blair Beekman.

Councilmember Molina commented that she regularly makes trips using public transit, as it is very accessible in her neighborhood. She recognized that some residents do not have the option to take transit, and that their primary mode of transportation must be their cars. She commented that she is

interested in elevating the option of public transportation and spoke in support of the Youth Opportunity Pass (YOP) program. She highlighted the bus driver strike from earlier in the year, as well as rider safety concerns, but also stated that she had not had negative experiences regarding wait times, frequency, or safety. She inquired about the status of improvements to amenities such as bathrooms for bus and Trolley drivers.

Sharon Cooney responded that they are conducting a transit amenities study to support a policy to distribute those types of amenities.

Councilmember Chavez spoke regarding safety concerns as a barrier for transit ridership. She spoke in support of additional on-site security staff for MTS to ensure that riders were safe. Councilmember Chavez also spoke in support of 15-minute service on all Trolley lines to support the workforce who rely on transit, and in support of a senior opportunity pass similar to the YOP program.

Mayor Jones spoke regarding geographically disadvantaged communities such as Fallbrook, Valley Center, Bonsall, Jamul, Alpine, and Ramona, which are farther away from job centers and high-quality transit. She commented that many residents in those areas live there due to the high cost of housing in the region, and that they should not be penalized or not allowed access to upward mobility because of the areas they live in. Mayor Jones also spoke in support of flexible fleets as an option for the entire region and commented that her constituents have expressed a desire to see flexible fleet service areas expanded in San Marcos.

Mary Dover responded that NCTD will be doing pilot programs in various areas, including Fallbrook, to assess the feasibility of using microtransit in areas that are hard to reach by traditional transit.

Councilmember Burkholder inquired about the average age of transit riders. Sharon Cooney responded that she did not have the exact data, but that a large portion of transit riders are under the age of 30. She confirmed that there is an existing discount for senior riders.

Councilmember Burkholder commented regarding the Covid-19 pandemic and its effect on ridership data and stated that she would have preferred a 10-year snapshot of ridership statistics. She spoke in support of repurposing funds to expand flexible fleets and make them more attainable. She also highlighted emerging technologies such as AI and autopiloted cars and encouraged critical thinking about the future. She also requested that Board member comments be provided in the minutes for this report.

Action: Information.

Reports

11. TransNet Smart Growth Incentive Program

The Board of Directors was asked to consider the recommendations from the Transportation Committee, Regional Planning Committee and Independent Taxpayer Oversight Committee concerning the evaluation criteria and release of the Cycle 6 Call for Projects for the Smart Growth Incentive Program.

Public Comments: Truth, Michael Brando, Mark, Cesar Javier, Alan C., Katheryn Rhodes, The Original Dra, Paul the Bold, Blair Beekman, Consuelo.

Action: Upon a motion by Mayor Minto and a second by Councilmember Chavez, the Board of Directors voted to release the Cycle 6 Call for Projects with no changes to the evaluation criteria or to the call for projects, including the prohibition for applicants to use other TransNet funding as a match.

Yes: Second Vice Chair Heebner, Councilmember Burkholder, Councilmember Chavez, Councilmember Duncan, Deputy Mayor Gaasterland, Mayor Wells, Mayor Kranz, Mayor White, Councilmember McKay, Councilmember Shu, Mayor Vasquez, Councilmember Molina, Councilmember Moreno, Mayor Jones, and Mayor Minto.

No: None.

Abstain: None.

Absent: Oceanside, Poway, and Vista.

Continued Non-Agenda Public Comment: Mark, Consuelo, Blair Beekman, Paul the Bold, The Original Dra, Katheryn Rhodes.

Continued Non-Agenda Member Comments: Councilmember Duncan.

12. Adjournment

The next Board of Directors meeting is scheduled for Friday, January 10, 2025, at 10 a.m.

Second Vice Chair Heebner adjourned the meeting at 11:52 a.m.

DRAFT

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)	Yes
City of Del Mar	Mayor	Terry Gaasterland (Primary)	Yes
City of El Cajon	Mayor	Bill Wells (Primary)	Yes
City of Encinitas	Mayor	Bruce Ehlers (Primary)	Yes
City of Escondido	Mayor	Dane White (Primary)	Yes
City of Imperial Beach	Councilmember	Jack Fisher (Primary)	No
City of La Mesa	Councilmember	Patricia Dillard (Alternate)	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)	Yes
City of San Diego	Councilmember	Vivian Moreno (Alternate)	Yes
City of San Marcos	Mayor	Rebecca Jones (Primary)	Yes
City of Santee	Councilmember	John Minto (Primary)	Yes
City of Solana Beach	Councilmember	Lesa Heebner (Primary)	Yes
City of Vista	Deputy Mayor	Katie Melendez (Primary)	No
Caltrans	Deputy Director	Ann Fox (Alternate)	Yes
Metropolitan Transit System	Deputy Mayor	Matthew Leyba-Gonzalez (Primary)	No
North County Transit District	Deputy Mayor	Jewel Edson (Primary)	Yes
Imperial County	Supervisor	Jesus Eduardo Escobar (Primary)	No
U.S. Department of Defense	Executive Director	Anna Shepherd (Alternate)	Yes
Port of San Diego	Commissioner	Dan Malcolm (Primary)	No
San Diego County Water Authority	Director	Mel Katz (Primary)	Yes
SDCRAA	Director	Gil Cabrera (Primary)	Yes
Mexico	Consul General	Alicia Kerber (Primary)	No
SCTCA	Chairwoman	Erica Pinto (Primary)	No
Planning Association	Boardmember	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. Board members receive a stipend from SANDAG for participation in meetings and events representing the agency: in county \$100 per meeting or event; out of county, \$150 per day per meeting or event.

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.

December 4, 2024: FACT Annual Board Meeting

Deputy Mayor Jewel Edson (Solana Beach) participated in the FACT 2024 Annual Board meeting as the officially appointed representative for SANDAG. The FACT Board recognized outstanding achievements by the members and agency partners and received the FY 2024 Performance & Financial Audit Updates.

Victoria Stackwick, Chief of Staff

Board of Directors

Friday, January 24, 2025

Comments and Communications

1. Non-Agenda Public Comments/Member Comments

Members of the public shall have the opportunity to address the Board of Directors on any issue within the jurisdiction of SANDAG that is not on this 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 and announcements under this agenda item.

Consent

+2. Approval of Meeting Minutes

Francesca Webb, SANDAG

Approve

The Board of Directors is asked to approve the minutes from its January 10, 2025, meeting.

+3. Chief Executive Officer Delegated Actions*

Beth Lupu, SANDAG

Information

In accordance with various board policies, this report summarizes delegated actions taken by the Chief Executive Officer.

+4. Policy Advisory Committee Actions

Francesca Webb, SANDAG

Approve

The Board of Directors is asked to ratify the actions taken by the Policy Advisory Committees as noted in the report.

+5. Approval of Proposed Solicitations and Contract Awards

Kelly Mikhail, SANDAG

Approve

The Board of Directors is asked to authorize the Chief Executive Officer to conduct the proposed solicitation(s) and contract awards as identified in this report.

+6. Access for All Grant Program Cycle 2 Funding Recommendations

Benjamin Gembler, SANDAG

Approve

The Board of Directors is asked to approve the Cycle 2 Funding Recommendations for the Access for All Grant Program.

Reports

+7. Independent Performance Auditor's Annual Performance Evaluation and Audit Committee's Recommended Compensation Adjustment

Councilmember David Zito, Audit Committee Chair

Approve

The Board of Directors is asked to discuss the Independent Performance Auditor's annual performance evaluation results and approve the salary adjustment as

recommended by the Audit Committee.

+8. Grand Jury Report

Mario Orso, SANDAG

Discussion
/ Possible
Action

Staff will provide an update on the Grand Jury Report findings and response.

+9. SANDAG 201*

Robyn Wapner, SANDAG

Information

Staff will present an update on the agency's activities.

Adjournment

10. Adjournment

The next Board of Directors meeting is scheduled for Friday, February 14, 2025, at 10:30 a.m.

+ next to an agenda item indicates an attachment

* next to an agenda item indicates that the Board of Directors also is acting as the San Diego County Regional Transportation Commission for that item

Board of Directors

Friday, February 14, 2025

Comments and Communications

1. Non-Agenda Public Comments/Member Comments

Members of the public shall have the opportunity to address the Board of Directors on any issue within the jurisdiction of SANDAG that is not on this 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 and announcements under this agenda item.

Consent

+2. Approval of Meeting Minutes

Francesca Webb, SANDAG

Approve

The Board of Directors is asked to approve the minutes from its January 24, 2025, meeting.

+3. Policy Advisory Committee Actions

Francesca Webb, SANDAG

Approve

The Board of Directors is asked to ratify the actions taken by the Policy Advisory Committees as noted in the report.

+4. Meetings and Events Attended on Behalf of SANDAG

Francesca Webb, SANDAG

Information

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

+5. Approval of Proposed Solicitations and Contract Awards

Kelly Mikhail, SANDAG

Approve

The Board of Directors is asked to authorize the Chief Executive Officer to conduct the proposed solicitation(s) and contract awards as identified in this report.

Chair's Report

+6. Annual Appointments

SANDAG Board Chair

+6A. Appointment of the Policy Advisory Committee Members and Designation of Transit Representatives to the Board of Directors

Information

This report provides a summary of the voting and advisory members appointed to the Policy Advisory Committees, including the Committee Chairs and Vice Chairs appointed by the SANDAG Chair, and the designation of Board members as transit representatives for the purpose of meeting federal requirements.

+6B. Appointment of Board Members: SANDAG Audit Policy Advisory Committee

Approve

and Military Working Group

The Board of Directors is asked to approve the appointment of Board members to the SANDAG Audit Policy Advisory Committee and the San Diego Regional Military Working Group Chair, and the as recommended by the SANDAG Chair.

Reports

+7. 2024 SANDAG Ethical Climate Survey

Discussion

Courtney Ruby, Independent Performance Auditor

The Office of the Independent Performance Auditor will present the results of the 2024 SANDAG Ethical Climate Survey for information and discussion.

+8. Downtown Stopover Update

Information

David Cortez, SANDAG

Staff will present an overview and updated of the Downtown Stopover project.

+9. Purple Line Planning Overview

Information

Cecily Taylor, SANDAG

Staff will present an overview of the Purple Line Conceptual Planning Study findings and next steps in project planning.

Adjournment

10. Adjournment

The next Board of Directors meeting is scheduled for Friday, February 28, 2025, at 9:00 a.m.

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* next to an agenda item indicates that the Board of Directors also is acting as the San Diego County Regional Transportation Commission for that item



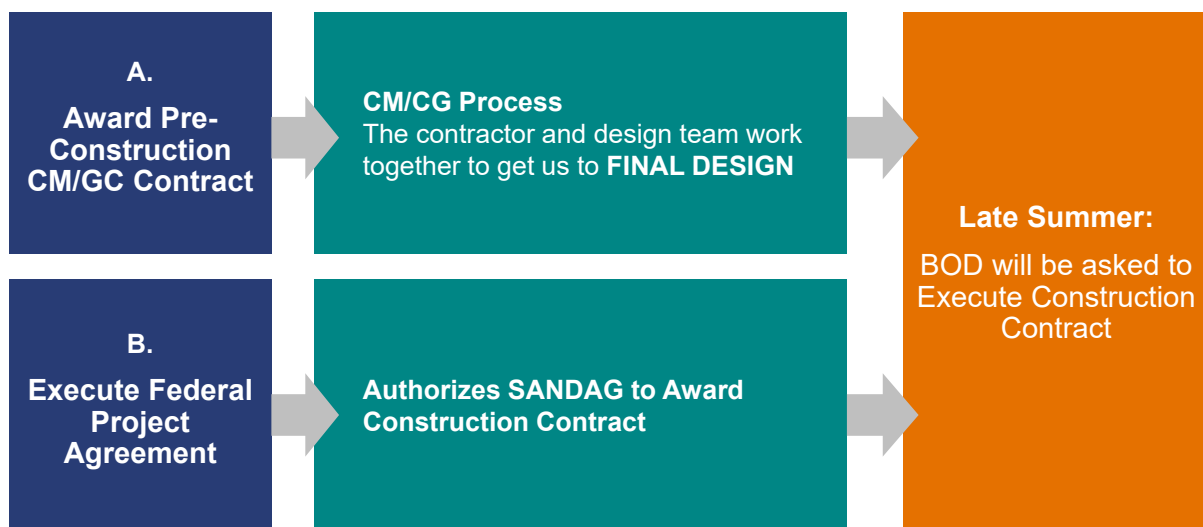
SR 11 OTAY MESA EAST

PORT OF ENTRY

Board of Directors | Item 6
Maria Rodriguez, Director of Mega Projects, Border and Goods Movement
Betsy Blake, Senior Legal Counsel SANDAG
Nikki Tiongco, Caltrans
January 10, 2025

1

Otay Mesa East Item 6 Summary



2

Item 6A. CM/GC Pre-Construction Services Contract Award

Project Phases:

- Pre-Construction Services
- Construction Services

Solicitation Details:

- Request for Qualifications (RFQ)
- Best Value Procurement Process
- Two firms submitted proposals

Recommended CM/GC:
Atkinson/Clark, A Joint Venture

Contract Duration & Value:

- 18 months
- \$3.5 million

Next Steps:

- Finalization and Execution of Pre-Construction Services Agreement
- Construction Services Agreement will be presented to the Board for approval once both parties have reached an agreement

Item 6B. Federal Project Agreement (FPA)

- Negotiations lasted two years and recently concluded.
- Roles of the Project Sponsors (Caltrans and SANDAG) and the Federal Partners (CBP and GSA)
- FPA is critical to success of the project

Summary



Project Update



Financial Plan

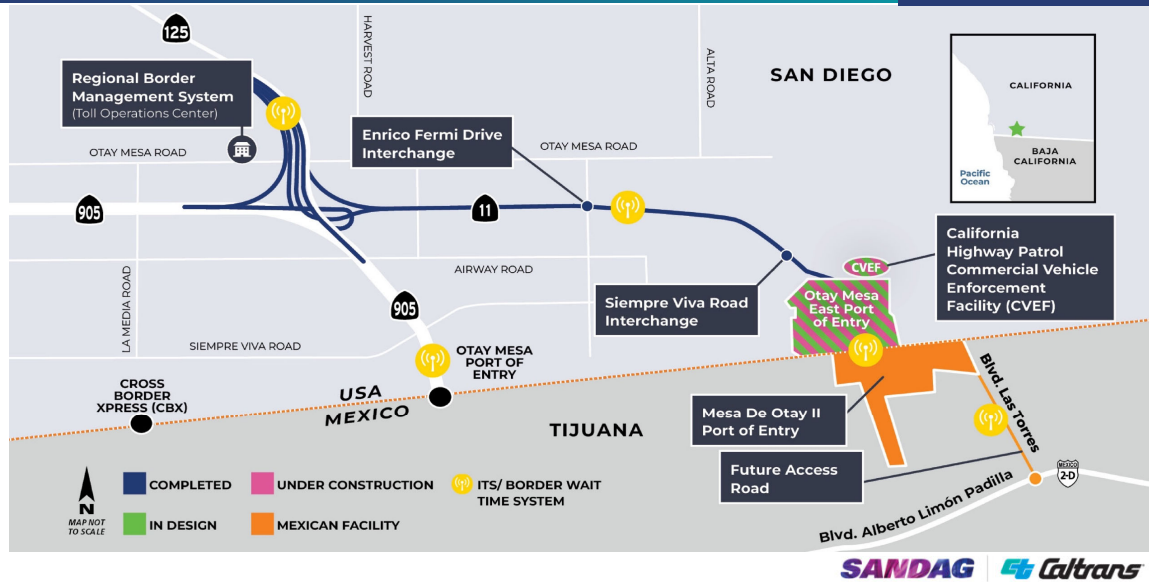


Federal Project Agreement

Project Update

Project Update

Corridor Cost: \$1.3B



7

Financial Plan

SANDAG | Caltrans

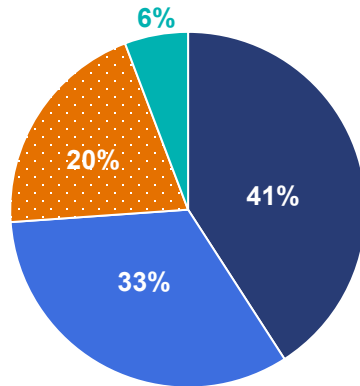
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8

Financial Plan

Non-Recourse Toll Revenue Bonds Leverages Significant State and Federal Funding

State Route 11/Otay Mesa East Port of Entry
Funding Categories



Fund Category	Dollars (Millions)
Federal	\$545.2
State	\$440.3
Local	\$76.9
Bonds (Future)	\$271.3
Total	\$1,333.7

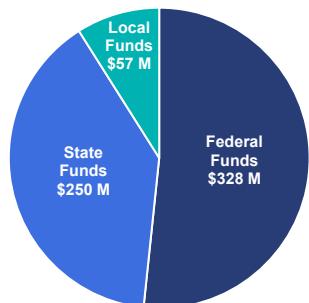
SANDAG | **Caltrans** | 9

9

Project Financial Plan for Construction

Completed Elements

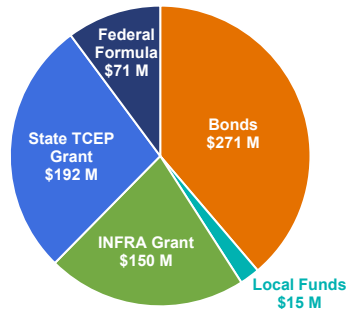
- Right-of-Way Acquisition
- SR-11/SR-905/SR-125 Connectors
- State Route 11



Total Funded to Date: **\$635 M**

To Be Constructed

- Otay Mesa East Port of Entry Facilities (POE)
- Intelligent Transportation System (ITS) and Tolling
- CHP/FMCSA Commercial Vehicle Enforcement Facility (CVEF)



Total Capital Funding Need: **\$699 M**

SANDAG | **Caltrans** | 10

10

Federal Project Agreement

11

11

Federal Negotiations Overview



April 2022

Weekly meetings began between GSA, CBP, SANDAG, and Caltrans



July 2023

Agreement to complete 30% design executed



January 2024

SANDAG submits draft Federal Project Agreement to GSA/CBP



April 2024

Project Sponsors complete 30% design package and provide to CBP and GSA



June 2024

MOU to complete final design and procure CM/CG executed



January 2025

Finalized FPA

12

SANDAG Legal and Practical Parameters

Otay Mesa East Toll Facility Act (SB 1486 (2008, Ducheny); SB 985 (2022, Hueso); AB 427 (2023, Alvarez))

- Limits use of Toll Revenues to certain project cost in the SR 11 Corridor like:
 - Bonds; tolling operations and administration; federal costs (e.g., staffing, equipment, etc.); capital improvements (e.g., repair, expansion, increasing transit and non-motorized options in the Corridor)

Binational Tolling Allocation Agreement (2022)

Amount of Toll Revenues Collected

- Non-recourse toll revenue bonds
- GSA's & CBP's shares: percentage not fixed amount

Federal Project Agreement - Overview

Capital & Outfitting



Operations & Maintenance (O&M) and Repair & Replace (R&R)



Modernization



FPA Terms

Parties: General Services Administration (GSA), Customs and Border Protection (CBP), SANDAG, and Caltrans
Term: Consistent with Toll Revenue Agreement/Bonds (40+ years)

Proposed Term	Responsible Party
Design, Construct, and Deliver POE Capital (SR 11, LPOE, CVEF, and ITS/Tolling)	SANDAG and Caltrans
Prompt Participation in Capital Delivery	CBP and GSA
Effect Conveyance of LPOE to U.S. Federal Government (Slide 16)	Caltrans and SANDAG
Operate and Maintain LPOE 16 hrs/day (Slide 22)	CBP and GSA
Request Federal Funds for Staffing (Slide 22)	CBP
Share Residual Revenues with Parties (Slide 19)	SANDAG

SANDAG | **Caltrans** | 15

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FPA Terms

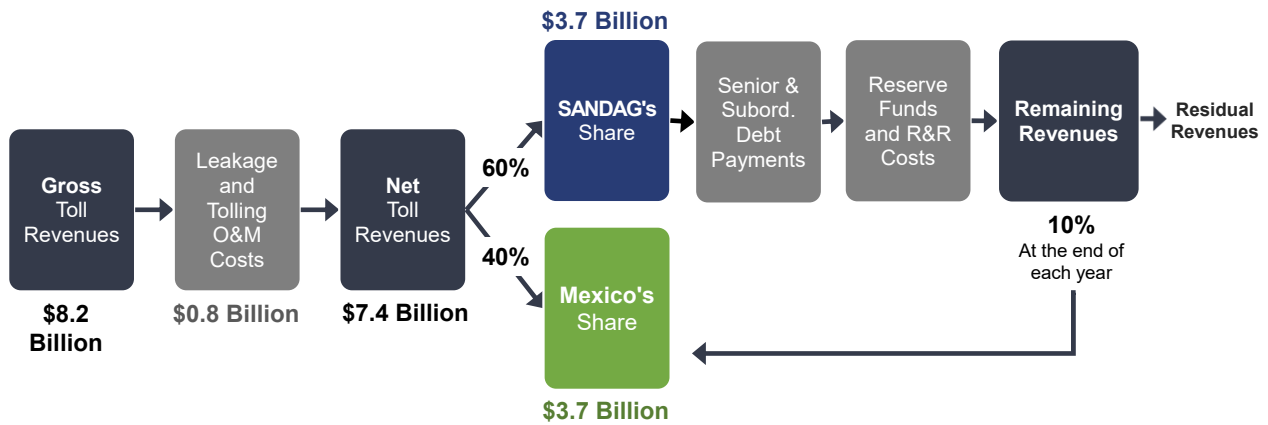
Continued

Proposed Term	Responsible Party
Build and Operate/Maintain FMCSA Space (Slide 25)	SANDAG and Caltrans
Fund GSA Construction Manager (\$300,000/year)	SANDAG
Authority to Award Construction Services Agreement	SANDAG

SANDAG | **Caltrans** | 16

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Flow of Toll Revenues Funds*



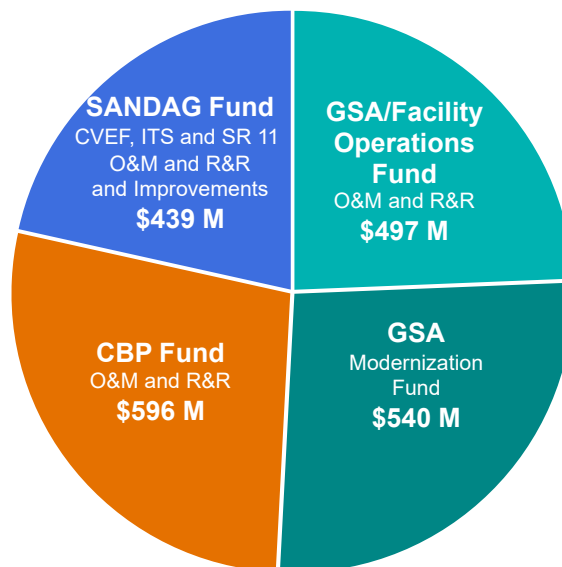
* Chart reflects Simplified Modified 50/50
Pure 50/50 effective appx. year 10

SANDAG | **Caltrans** | 17

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Sponsors' Proposed Contributions from Residual Revenues

Operations and Maintenance over approx. 40 years and Modernization project investment

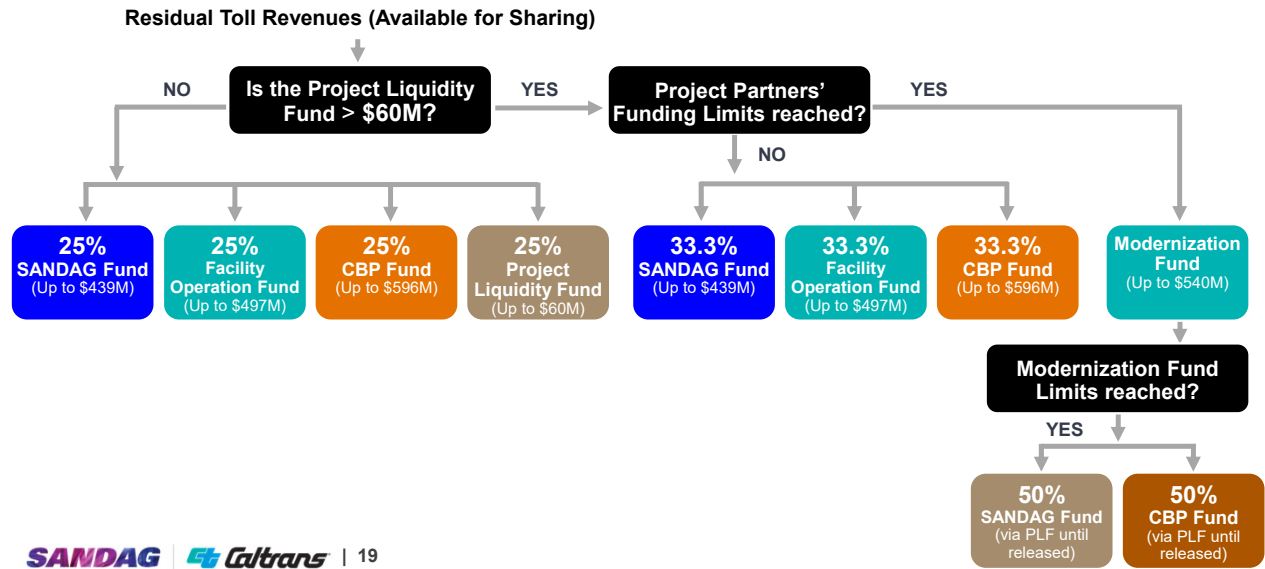


Total not including liquidity fund
\$2 Billion

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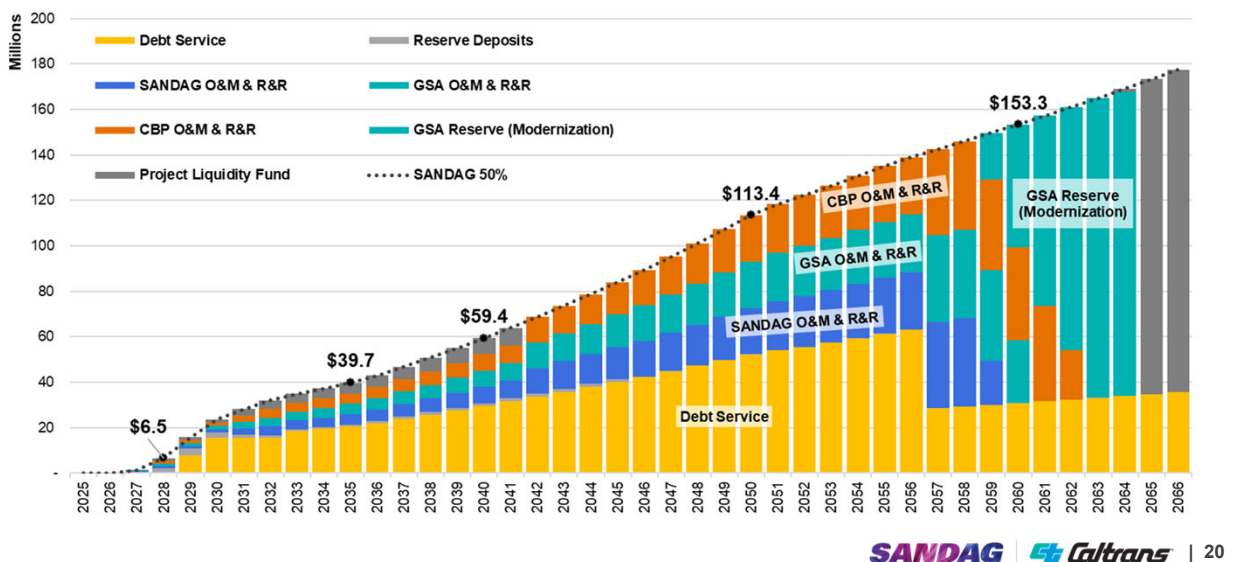
18

Proposed Revenue Sharing Structure



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Application of Toll Revenues



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CBP and GSA

Commencement of Operations Contributions

SANDAG to fund up to \$81.7 million for items prior to Commencement of Toll Operations/CBP's occupancy of the Property to be used for:

Commencement of Operations Contributions

Land
Border
Integration
Equip.

Non-
Intrusive
Inspection
(NII)

FFE and
Vehicles

GSA O&M
Fund
Reserve
(\$10 million)

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LPOE Conveyance and DAA

- SANDAG to design, construct, commission, and convey "LPOE Facilities" to U.S. Federal Government via GSA.
- Conveyance upon "Beneficial Occupancy"
 - SANDAG conveys LPOE Facilities
 - Caltrans conveys land underlying LPOE Facilities, including land for future vault and firing range
- Conveyance via Future Donation Acceptance Agreements (DAA)
 - DAAs address specifics of gift (e.g., property legal description)
 - Goal date of March 31, 2025, to execute LPOE Facilities DAAs
 - Failure to execute DAA in reasonable time = FPA void

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CBP and GSA

Staffing and Operations & Maintenance

- CBP intends to staff LPOE 16 hrs/day, 365 days/year
- CBP to request annual funding for staffing, subject to congressional appropriations
- Challenge: Funding for CBP Operations and Maintenance (O&M) and Repair and Replace (R&R) costs
 - Sponsors' projected contribution may be insufficient to pay for all O&M during the first 21 years.
 - CBP/GSA will need to bridge through the federal budget process.

GSA/CBP Gift Acceptance Authority

- Gifts must be “Unconditional”
 - Sponsors are not liable to GSA/CBP for failure to deliver gifts.
 - GSA/CBP may cease LPOE operations and/or terminate FPA if Sponsors fail to deliver gifts anticipated under FPA
 - GSA/CBP control LPOE operations (e.g., based on availability of funds, operational needs, etc.)

Additional Terms

OME Corridor Working Group

A working group made up of eight representatives (two from each Party) to discuss recommendations to their respective agencies re: use of Residual Revenues and other matters. Recommendations are non-binding on the Parties.

Termination Rights

The FPA may be terminated pursuant to the Parties' mutual, written agreement or if another Party materially breaches the FPA and does not cure after notice/within a reasonable time.

Future Phased Delivery

If the Parties reach agreement for future, phased delivery of the Project, the FPA and related DAAs will be amended as appropriate to reflect such phased delivery.

Dispute Resolution

Disputes not settled through informal means may be settled through alternative dispute resolution (e.g., negotiation, non-binding mediation, etc.). Any litigation claims will be resolved pursuant to Federal Law.

SANDAG |  **Caltrans** | 25

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Additional Terms

Continued

Warranties

Project Sponsors to assign/provide warranties to GSA for LPOE Facilities.

FMCSA

Project Sponsors to provide Federal Motor Carriers Safety Administration space at the CVEF and contribute up to \$500,000 towards initial outfitting costs. Such contribution is conditional on FMCSA and CHP reaching agreement on co-location of FMCSA at the CVEF. Sponsors to ensure FMCSA's O&M is paid.

GSA Construction Manager

SANDAG to fund up to \$300,000/year to support GSA construction manager for the LPOE Facilities.

SANDAG |  **Caltrans** | 26

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Next Steps

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Next Steps to Success

- Agreements:
 - Donation Acceptance Agreements for the LPOE
 - Binational agreements with Federal Mexican Government that the Board approved at its July 12, 2024, Board meeting.
 - INFRA Grant Agreement with the U.S. Department of Transportation
 - Allocate the first \$52.5 million to the Project.
 - CM/GC construction services agreement
- Continued engagement with U.S. Federal Government to support Project's success

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Staff Recommendation

The Board of Directors is asked to adopt Resolution No. 2025-09, approving and authorizing the execution and delivery of the Federal Project Agreement and related Donation Acceptance Agreements with Caltrans, U.S. General Services Administration, and U.S. Customs and Border Protection.

Questions & Discussion

Approval of Proposed Contract Award for the Otay Mesa East Port of Entry Project

Overview

Solicitations valued at \$5 million or more are brought to the Board of Directors (Board) for approval prior to advertisement and again prior to contract award. There is one pending action for the Board's consideration.

Key Considerations for Contract Award

Construction Manager/General Contractor Services for the Otay Mesa East Port of Entry Project

The Board approved the solicitation for this procurement at its meeting on June 28, 2024. SANDAG solicited proposals from qualified and experienced firms to perform Construction Manager/General Contractor (CM/GC) services for the Otay Mesa East Port of Entry Project (Project).

The Project will be executed in two phases: Pre-Construction Services and Construction Services. Through a best value procurement process, the selected CM/GC will initially be awarded a Pre-Construction Services Agreement. As the Project design nears completion and it is determined that the CM/GC is successfully fulfilling the Pre-Construction Services requirements, SANDAG and the CM/GC will enter negotiations to finalize the Construction Services Agreement.

The solicitation was advertised on SANDAG public bidding portal from July 9, 2024, to September 9, 2024, and proposals were received from two firms. The Evaluation Committee has recommended Atkinson/Clark Joint Venture for Pre-Construction Services contract award.

If the selected firm completes the Pre-Construction Services and both parties agree on the scope and price for the Construction Services, a Construction Services Agreement will be presented to the Board for approval prior to execution.

The proposed contract with the selected firm would provide for a term of 18 months. The total value of the contract for Pre-Construction Services will not exceed \$3.5 million.

Next Steps

Pending approval by the Board, SANDAG will award a contract to the firm mentioned above and move forward with finalizing and executing the CM/GC Pre-Construction Services Agreement for the Project.

Kelly Mikhail, Director of Contracts and Procurement Services

Action: Approve

The Board of Directors is asked to authorize the Chief Executive Officer to: Award a contract not to exceed \$3.5 million to Atkinson/Clark Joint Venture for Construction Manager/General Contractor Pre-Construction services for the Otay Mesa East Port of Entry project as detailed in this report.

Fiscal Impact:

Funding for the proposed contract will be derived from Capital Improvement Program (CIP) No. 1201101. The total value of the contract awarded by SANDAG will not exceed \$3.5 million.

Schedule/Scope Impact:

The duration for Pre-Construction Services is 18 months.

Otay Mesa East Federal Project Agreement

Overview

This report provides information on the proposed Federal Project Agreement (FPA) between SANDAG, Caltrans, the United States General Services Administration (GSA), and the United States Customs and Border Protection (CBP), and requests the Board of Directors authorize the execution of the FPA and related, future Donation Acceptance Agreement. The FPA addresses the Parties' respective roles in relation to the Otay Mesa East Land Port of Entry's (OME) design, construction, commissioning, operation, ownership, management, and future sharing of Residual Toll Revenue.¹

Key Considerations

The SR 11/OME Project (Project) is a joint venture between SANDAG and Caltrans (Project Sponsors), and other state and federal partners in the U.S. and Mexico, whereby vehicles pay a dynamically priced toll to maintain a wait-time average goal of no more than 20 to 30 minutes. This 21st century border crossing and supportive facilities will enhance regional mobility, improve border security, reduce air pollution, fuel economic growth, and bolster binational trade. The Project is a first of its kind collaboration to use tolls to support the Federal government in fulfilling its mission in cross-border mobility, security, and trade.

The Project has been a part of the Baja California-California Border Master Plan since 2008, which is used to guide planning and transportation investments by US and Mexican governments. The Project has been in SANDAG's Regional Transportation Plan since 2000. Project Sponsors have completed the roads, connectors, related infrastructure, and utilities (please view a progress video [here](#)). Caltrans owns the right-of-way and related land on which SANDAG will build both the land port of entry (POE or LPOE) and the joint federal and state commercial vehicle inspection facility.

Staff is completing a suite of agreements with federal, state, and Mexican partners to memorialize the parties' respective roles, responsibilities, rights, and obligations with respect to the Project, and ensure that toll revenues are used in accordance with the Project's enabling legislation. The team has also completed 65% of the preliminary design of the POE. Finally, the Federal Mexican government has

Action: Adopt

The Board of Directors is asked to adopt Resolution No. 2025-09, approving and authorizing the execution and delivery of the Federal Project Agreement, related future amendment to support Project Phasing, and related Donation Acceptance Agreements with Caltrans, U.S. General Services Administration, and U.S. Customs and Border Protection.

Fiscal Impact:

The Agreement provides for a future gift of the POE Facilities, with an estimated value of \$590 million, as well as allocation of an estimated \$2 billion of Residual Toll Revenue over approximately 40+ years between the Parties. If the Agreement continues beyond the initial term, it provides for how future Residual Toll Revenue would be split.

Schedule/Scope Impact:

Execution of the Federal Project Agreement will permit SANDAG to award the future POE Construction contract.

¹ Residual Toll Revenues are toll revenues that remain each year after: 1) Mexico receives its share of the toll revenue under the Toll Revenues Allocation agreement; and 2) SANDAG's non-recourse toll revenues bond payment and reserve funding obligations are satisfied.

completed construction of their side of the POE and related roadways. The Project Sponsors and the Federal Mexican are collaborating to complete the binational ITS/Tolling system.

Federal Project Agreement - Background

The Otay Mesa East Toll Facility Act (Cal. St. & Hwy. Code, §§ 31460 *et seq.*) (OME Act) is the Project's enabling legislation. The OME Act limits the usage of the Project's toll revenue to specific eligible Project costs outlined in § 31475 (e.g., costs of Project financing, design, construction, implementation, administration, etc.). Notably, the OME Act permits Project toll revenues to be used to reimburse or pay federal agencies for certain Project costs such as staffing, equipment, fixtures, operations, maintenance, software, etc., as well as pay costs related to POE repair and rehabilitation.

For the past two years, SANDAG and Caltrans staff have been working with CBP and GSA on developing the FPA for the Board's consideration. The process of developing the FPA has taken longer than anticipated and has delayed the development of the Project. In January 2024, the Project Sponsors submitted a draft FPA to the Federal Partners. In October of 2024, the Federal Partners submitted their edits to that document; unfortunately, the edits included substantial changes to the Parties' agreed terms. In December 2024, the Federal Partners submitted revised edits to the draft FPA. The Parties have worked expeditiously and through the holidays to prepare the attached FPA for the Board's consideration.

If the Board adopts the proposed resolution, it also permits SANDAG to execute the future Donation Acceptance Agreements (DAAs) between the Project Sponsors and Federal Partners, which is required to transfer the LPOE Facilities and the underlying land to the Federal Partners. The Parties intend to execute the DAAs by March 31, 2025, which provides time to develop a draft legal description of the property to be transferred. The resolution also permits SANDAG to execute future amendments to both the FPA and DAAs to permit phasing of delivery of the LPOE Facilities.

Prompt execution of the FPA permits the Project Sponsors to award the LPOE construction contract, which is essential to avoid loss of the \$150 million INFRA grant that the U.S. Department of Transportation awarded Project Sponsors in September 2022.

Federal Project Agreement – Essential Terms

A summary of the FPA's essential terms is attached as Attachment 1. Some of those terms include:

Term	Description
The Parties	<ul style="list-style-type: none"> Federal Partners: GSA and CBP Project Sponsors: SANDAG and Caltrans
Initial Duration	The FPA is effective once signed by all Parties and will be in effect until the later of January 1, 2063, or the date SANDAG pays the Project bonds, any TIFIA loan, and any outstanding obligations to Mexico under the Toll Revenue Allocation agreement; subject in each case to the Evergreen Provision described below.
Evergreen Provision	If the Toll Revenue Allocation agreement continues under substantially similar terms beyond the Initial Duration, the FPA also continues.
POE Delivery	Project Sponsors to design, construct, and commission the POE Facilities (defined below), as well as the Ancillary Facilities (SR-11, the Commercial Vehicle Enforcement Facility (CVEF), the Roadway Toll Collection System, Back-Office System, and the cross-border Intelligent Transportation System).

Term	Description
Upfront Contributions	Prior to Commencement of Toll Operations and Beneficial Occupancy (including conveyance and Federal Partners' acceptance of the LPOE Facilities), SANDAG to fund up to \$81.7 million for Federal Partners' outfitting costs, security equipment, and initial operating reserves as further described in Section 6.5 of the FPA.
POE Conveyance	Upon Beneficial Occupancy, Caltrans to convey the underlying land of the LPOE Facilities and SANDAG to convey the LPOE Facilities, to GSA/CBP/the U.S. Federal Government pursuant to the future Donations Acceptance Agreements (in accordance with Section 6.4 of the FPA).
Initial Residual Toll Revenue Split (Dependent on Availability of Residual Toll Revenue ²)	<p>As further described in Section 6.6 and Exhibit A of the FPA:</p> <ul style="list-style-type: none"> • Project Sponsors: Up to \$439 million, to be used in the SR-11/OME Corridor and on related Ancillary Facilities; • GSA: <ul style="list-style-type: none"> ○ Up to \$497 million, to be used in aid of the POE's Operations and Maintenance; and ○ Up to \$540 million, for future POE modernization; • CBP: Up to \$596 million, to be used in aid of CBP's operations, maintenance, processing technology, and outfitting of the LPOE Facilities. • Any remaining amounts (during the initial term) will be split 50/50 between Project Sponsors and CBP for uses noted above. • If the FPA continues under the Evergreen Provision <i>and</i> funding levels above are met, Residual Revenues will be split in thirds: 1) Project Sponsors, 2) CBP, and 3) GSA, to be used in aid of the Project/Corridor. <p>Funds flow through a Residual Revenues Trust Agreement and require a related Donations Acceptance Agreement. Funding levels noted above are often referred to as "Maximum Funding Levels", which are exclusive of Commencement of Operations Contributions.</p>
Operation of the LPOE Facilities	Subject to availability of funds and CBP's operational requirements, Federal Partners intend to operate the LPOE Facilities 16 hours per day, 365/366 days per year.
Federal LPOE Facilities Staffing and Funding	CBP to make annual federal appropriations request for funding for LPOE Facilities staffing. Federal Partners may request funding for necessary O&M for the LPOE Facilities.
DAA	The Parties must execute the future Donation Acceptance Agreements (DAAs) for the LPOE Facilities and underlying land before the Project can proceed to construction. If such DAAs are not executed, the FPA will be void. Future DAAs are also required for Federal Partners to accept future Residual Revenues to the various Project Funds (as discussed in Section 6.6 of the FPA).

² Residual Toll Revenues are toll revenues that remain each year after: 1) Mexico receives its share of the toll revenue under the Toll Revenue Allocation agreement; and 2) SANDAG's non-recourse toll revenues bond payment and reserve funding obligations are satisfied.

Next Steps

If the Parties approve and execute the FPA, the Project Sponsors may award the construction services agreement.

The Project team is also pursuing the following activities:

- Award the CM/GC pre-construction services agreement with Atkinson Clark (see Item 6A).
- Finalize and execute the Donation Acceptance Agreements for the LPOE Facilities (DAAs) with the Federal Partners by a goal date of March 31, 2025. Execution of such DAAs will permit the Project Sponsors to proceed to construction of the LPOE Facilities.
- Briefings with the new Mexican Federal Administration to execute the agreements that the Board approved at its [July 12, 2024](#) Board meeting.
- Finalize the \$150 million INFRA Grant Agreement with the U.S. Department of Transportation and Federal Highways Administration and allocate the first \$52.5 million to the Project.
- Continue engagement with U.S. Federal Government to support the Project's success.

Betsy Blake, Senior Legal Counsel

Attachments: 1. Summary of FPA's Essential Terms
 2. Draft FPA
 3. Resolution No. 2025-09

Summary of the Federal Project Agreement (FPA) Essential Terms

Capitalized terms can be found in the FPA through the Find function (Ctrl + F). Please reference the FPA for further information.

Term	Description
The Parties	<ul style="list-style-type: none"> Federal Partners: GSA and CBP Project Sponsors: SANDAG and Caltrans
Initial Duration	The FPA is effective once signed by all Parties and will be in effect until the later of January 1, 2063, or the date SANDAG pays the Project bonds, any TIFIA loan, and any outstanding obligations to Mexico under the Toll Revenue Allocation agreement; subject in each case to the Evergreen Provision described below.
Evergreen Provision	If the Toll Revenue Allocation agreement continues under substantially similar terms beyond the Initial Duration, the FPA also continues.
POE Delivery	Project Sponsors to design, construct, and commission the POE Facilities (defined below), as well as the Ancillary Facilities (SR-11, the Commercial Vehicle Enforcement Facility (CVEF), the Roadway Toll Collection System, Back-Office System, and the cross-border Intelligent Transportation System).
Upfront Contributions	Prior to Commencement of Toll Operations and Beneficial Occupancy (including conveyance and Federal Partners' acceptance of the LPOE Facilities), SANDAG to fund up to \$81.7 million for Federal Partners' outfitting costs, security equipment, and initial operating reserves as further described in Section 6.5 of the FPA.
POE Conveyance	Upon Beneficial Occupancy, Caltrans to convey the underlying land of the LPOE Facilities and SANDAG to convey the LPOE Facilities, to GSA/CBP/the U.S. Federal Government pursuant to the future Donations Acceptance Agreements (in accordance with Section 6.4 of the FPA).
Initial Residual Toll Revenue Split (Dependent on Availability of Residual Toll Revenue ¹)	<p>As further described in Section 6.6 and Exhibit A of the FPA:</p> <ul style="list-style-type: none"> Project Sponsors: Up to \$439 million, to be used in the SR-11/OME Corridor and on related Ancillary Facilities; GSA: <ul style="list-style-type: none"> Up to \$497 million, to be used in aid of the POE's Operations and Maintenance; and Up to \$540 million, for future POE modernization; CBP: Up to \$596 million, to be used in aid of CBP's operations, maintenance, processing technology, and outfitting of the LPOE Facilities.

¹ Residual Toll Revenues are toll revenues that remain each year after: 1) Mexico receives its share of the toll revenue under the Toll Revenue Allocation agreement; and 2) SANDAG's non-recourse toll revenues bond payment and reserve funding obligations are satisfied.

Term	Description
	<ul style="list-style-type: none"> Any remaining amounts (during the initial term) will be split 50/50 between Project Sponsors and CBP for uses noted above. If the FPA continues under the Evergreen Provision <i>and</i> funding levels above are met, Residual Revenues will be split in thirds: 1) Project Sponsors, 2) CBP, and 3) GSA, to be used in aid of the Project/Corridor. <p>Funds flow through a Residual Revenues Trust Agreement and require a related Donations Acceptance Agreement. Funding levels noted above are often referred to as “Maximum Funding Levels”, which are exclusive of Commencement of Operations Contributions.</p>
Operation of the LPOE Facilities	Subject to availability of funds and CBP’s operational requirements, Federal Partners intend to operate the LPOE Facilities 16 hours per day, 365/366 days per year.
Federal LPOE Facilities Staffing and Funding	CBP to make annual federal appropriations request for funding for LPOE Facilities staffing. Federal Partners may request funding for necessary O&M for the LPOE Facilities.
DAA	The Parties must execute the future Donation Acceptance Agreements (DAAs) for the LPOE Facilities and underlying land before the Project can proceed to construction. If such DAAs are not executed, the FPA will be void. Future DAAs are also required for Federal Partners to accept future Residual Revenues to the various Project Funds (as discussed in Section 6.6 of the FPA).
LPOE Facilities (to be conveyed via DAAs to Federal Partners)	<p>LPOE Facilities means: collectively, fully functional Net-Zero Ready Port of Entry as described below, and in accordance with LPOE Specifications and the Approved Design. LPOE Facilities will include the following northbound lanes: 7 Privately Owned Vehicle (POV) lanes and 5 Commercially Owned Vehicles (COV) lanes. The LPOE Facilities will also include buildings, canopies, and site work to accommodate inspections for north and south-bound commercial and noncommercial vehicles, as follows:</p> <p>A. BUILDINGS: (i) Main Building/Head House; (ii) Commercial Operations; (iii) Commercial Inspection Building; (iv) Day Kennel; (v) Outbound Support Building; and (vi) Commercial Export.</p> <p>B. CANOPIES: (i) Primary Inspection POV Inbound (7 lanes); (ii) Primary Inspection COV Inbound (5 lanes); (iii) Commercial Dock Unloading Area (65 docks); (iv) POV Secondary Inspection; (v) COV Exit Booths (3 lanes); (vi) Primary Inspection POV Outbound (3 lanes); (vii) Primary Inspection COV Outbound (3 lanes); and (viii) Outbound Export Dock (16 Docks).</p> <p>C. SITE ELEMENTS: (i) Pre-primary and Secondary Non-Intrusive Inspection (NII) Technology for POV and COV; (ii) Port Runner Suppression System; (iii) Incidental Hazmat Containment (drive-through); (iv) Dog Relief Areas; (v) Parking; (vi) traffic circulation; and (vii) any other</p>

Term	Description
	<p>elements necessary to support LPOE Facilities as may be shown on Approved Design.</p> <p>The LPOE Facilities will also include the Commencement of Operations Contributions. If the LPOE Facilities listed above are expanded in the future, through the Parties' mutual agreement, the term LPOE Facilities as used in the FPA will include such expansions. Any future vault or shooting range is specifically excluded from the definition of LPOE Facilities, but the land necessary to support such facilities will be conveyed to Federal Partners.</p>
Commencement of Operations Contributions	<p>SANDAG to fund \$81.7 million for:</p> <ul style="list-style-type: none"> • Acquisition and installation of -NII equipment and related software and security technology; • Land Border Integration equipment; • Furniture, Fixtures, and Equipment (including fleet and signage) for the LPOE Facilities; and • Deposit \$10 million in the Facility Operation Fund (for GSA operations of the LPOE Facilities). Such amount is included in the \$81.7 million amount referenced above.
Federal Motor Carrier Safety Administration ("FMCSA")	<ul style="list-style-type: none"> • Project Sponsors will provide FMCSA Space and contribute up to \$500,000 towards initial Communications, IT, operational security components, and furnishing for FMCSA, which will be a part of the CVEF. Such contribution is conditional on FMCSA and CHP reaching agreement on co-location of FMCSA at the CVEF. • FMCSA will be exempt from traditional cost for operations and maintenance of the FMCSA Space (e.g., utilities, rent, janitorial, security, building operations and maintenance and repair and replacement), which the Project Sponsors will be responsible to ensure are provided and/or paid. FMCSA will be financially responsible for the salaries of its personnel and any cost beyond those identified in the preceding sentence.
GSA Construction Manager	<p>SANDAG to fund up to \$300,000 per year (from notice to proceed for construction until one year following Beneficial Occupancy of the LPOE Facilities) towards GSA's LPOE Construction Manager, as further described in Section 6.7 of the FPA.</p>
Award of LPOE Facilities Construction Services Agreement and Notice to Proceed	<p>Execution of the FPA permits SANDAG to award the Construction Services Agreement for the LPOE Facilities; SANDAG may not issue a Notice to Proceed for a Construction Package under such Construction Services Agreement until the related DAA is executed and requirements of the Presidential Permit are satisfied.</p>

Term	Description
Liability	<p>The Project Sponsors are providing the LPOE Facilities and Monetary Contributions to the Federal Partners as an unconditional gift. If Toll Revenues/Monetary Contributions are less than expected and/or the LPOE Facilities are not delivered, the Project Sponsors have no liability to the Federal Partners. Similarly, the Federal Partners accept the LPOE Facilities as an unconditional gift and will operate them as described in the FPA. If the Project Sponsors fail to provide Federal Partners the gifts anticipated under the FPA, the Federal Partners have the option to cease operation at the LPOE Facilities or terminate the FPA, as applicable. Sponsors to provide warranties for the LPOE Facilities as specified in Section 10 of the FPA.</p> <p>This cost risk to deliver the LPOE Facilities and related Ancillary Facilities is on Project Sponsors, except that SANDAG's responsibility for Commencement of Operations Contributions (described above) are capped at \$81.7 million.</p>
Change Orders/Design Changes	Federal Partners' design changes and/or construction change orders that vary the LPOE Specifications will be accepted until Beneficial Occupancy only if: 1) they are "Reasonably Necessary"; 2) are required to comply with OSHA/CALOSHA requirements; or 3) to otherwise comply with certain life/health/safety federal requirements that are also applicable to other similar land ports of entry.
OME Corridor Working Group	A working group made up of eight representatives (two from each Party) to discuss recommendations to their respective agencies re: use of Residual Revenues and other matters. Recommendations are non-binding on the Parties.
Termination Rights	The FPA may be terminated pursuant to the Parties' mutual, written agreement or if another Party materially breaches the FPA and does not cure after notice/within a reasonable time.
Future Phased Delivery	If the Parties reach agreement for future, phased delivery of the Project, the FPA and related DAAs will be amended as appropriate to reflect such phased delivery.
Dispute Resolution	Disputes not settled through informal means may be settled through alternative dispute resolution (e.g., negotiation, non-binding mediation, etc.). Any litigation claims will be resolved pursuant to Federal Law.

Federal Project Agreement (1-2-2025_SANDAG DRAFT)

OTAY MESA EAST LAND PORT OF ENTRY PROJECT AGREEMENT

This Project Agreement (“**Agreement**”) addresses the roles of the parties to this Agreement in relation to the planning, design, development, construction, conveyance, funding, financing, ownership, operations, repair, and maintenance of the new Otay Mesa East Land Port of Entry (“**Otay Mesa East LPOE**” or “**LPOE**”) and State Route 11 (“**SR-11**”), collectively called the “**Project**,” and establishes associated milestones and timelines. This Agreement is between the “**Project Sponsors**,” which are the California Department of Transportation (“**CALTRANS**”) and the San Diego Association of Governments (“**SANDAG**”), and the “**Federal Partners**,” which are the U.S. Department of Homeland Security, acting by and through U.S. Customs and Border Protection (“**CBP**”), and the U.S. General Services Administration (“**GSA**”). Each of CALTRANS, SANDAG, CBP, and GSA are referred to hereinafter as a “**Party**” and collectively as the “**Parties**.”

RECITALS

This Agreement is made with respect to the following facts:

A. Otay Mesa East LPOE and SR-11 will be located in San Diego County, California, and will serve the San Diego, California, and Tijuana, Baja California, Mexico region to alleviate congestion and accommodate future growth in binational trade and traffic in the California/Baja California border region. SANDAG intends to use a variable toll system with congestion pricing to accomplish these goals.

B. A Final Tier II Environmental Impact Report/Environmental Impact Statement, dated March 29, 2012 (“EIR/EIS”), was approved and a Record of Decision was developed and approved on September 24, 2012, for the future SR-11 and Otay Mesa East LPOE. GSA is in the process of adopting the approved EIR/EIS – Record of Decision.

C. On September 30, 2008, California Senate Bill 1486, the “Otay Mesa East Toll Facility Act,” California Streets & Highways Code § 31460 *et seq.*, was signed by the California Governor. The Act authorized SANDAG to issue bonds for the acquisition, construction and completion of the Project and to impose tolls or user fees for the repayment of the bonds and payment of the cost for maintenance and capital improvement costs of Federal Partners.

D. On September 18, 2022, California Senate Bill 985 was signed by the California Governor, thereby modifying the Otay Mesa East Toll Facility Act to, among other things, authorize SANDAG to enter into an agreement with the government of Mexico or a government agency or unit thereof for the purposes of imposing and collecting tolls and acquiring, operating, and maintaining tolling facilities at the Otay Mesa East LPOE.

E. On September 8, 2023, California Assembly Bill 427 was signed by the California Governor, thereby further modifying the Otay Mesa East Toll Facility Act to, among other things, add the construction manager/general contractor alternative project delivery method to the list of delivery methods SANDAG may utilize to deliver the Project or any Project component provided certain conditions are met.

F. SANDAG will ensure that the Project includes state-of-the-art technology; including a border wait time detection system, advanced scanners for passenger and commercial vehicles,

lane management systems, and advanced traveler information systems; to enhance efficiency and throughput and enable drivers to make informed decisions about which border crossing they want to use based on current wait times.

G. The United States Department of State has approved Presidential permits on November 20, 2008, and November 19, 2018, for construction, operation, and maintenance of a new Otay Mesa East border crossing, as described in such permits, at the international boundary between the United States and Mexico, subject to the conditions set forth in such permits. GSA is the named permittee under those Presidential permits.

H. The Parties, through this Agreement, intend to establish their respective roles with respect to the planning, design, development, construction, conveyance, funding, financing, ownership, operation, and maintenance of the Project.

NOW THEREFORE, in consideration of the foregoing recitals and the covenants and agreements set forth herein, the Parties hereby agree as follows:

1.0 Acronyms

The following acronyms refer to the terms set forth below. To the extent an acronym noted below is otherwise defined in this Agreement, the non-Section 1.0 definition will control.

- 1.1 CALTRANS** - California Department of Transportation
- 1.2 CBP** - United States Customs and Border Protection
- 1.3 CHP** – California Highway Patrol
- 1.4 COV** – Commercially-Owned Vehicle(s)
- 1.5 CVEF** – Commercial Vehicle Enforcement Facility
- 1.6 FMCSA** -- Federal Motor Carrier Safety Administration
- 1.7 GSA** - United States General Services Administration
- 1.8 LPOE** – Otay Mesa East Land Port of Entry
- 1.9 POV** – Privately-Owned Vehicle(s)
- 1.10 SANDAG** - San Diego Association of Governments
- 1.11 SR-11** – California State Route 11
- 1.12 SICT** – Mexico's Ministry of Infrastructure, Communications and Transportation
- 1.13 TIFIA** -Transportation Infrastructure Finance and Innovation Act
- 1.14 USDOT** – United States Department of Transportation

2.0 Definitions and Interpretation of Agreement. As used in the Agreement, the following terms will have the meanings set forth below. References to sections in the definitions means

sections of the Agreement unless otherwise specified, and references to exhibits means exhibits attached to the Agreement unless otherwise specified.

2.1 Agreement – Has the meaning provided in the introductory paragraph.

2.2 Applicable Law – Means U.S. federal law as now adopted and as may be hereafter amended; however, to the extent issues not governed by federal law impact matters under this Agreement, including matters of conveyance of real and personal property, the laws of the State of California may be deemed to apply to such matters, as the same may be amended from time to time. However, in no case will this be construed to be a waiver of the Federal Government's sovereign immunity.

2.3 Approved Construction Package(s) – Means the Approved Construction Package(s) pursuant to Section 6.2.3.

2.4 Approved Design – Means the Approved Design pursuant to Section 6.2.2.

2.5 Back-Office System – The system comprising hardware, equipment and software for SR-11 tolling that work in combination to provide toll transaction processing, account management, customer service, and violation processing.

2.6 Beneficial Occupancy – Beneficial Occupancy (BO) is obtained when all of the following requirements are met:

(a) Is fully and satisfactorily complete in accordance with the applicable statement of work, LPOE Specifications, Approved Design, and Approved Construction Package(s), except for minor punch list items that do not interfere with the use of the space;

(b) Meets fire and life safety requirements, has received a Certificate of Occupancy from the Authority Having Jurisdiction;

(c) Has been conveyed to and accepted by the Federal Partners and is ready for the use for which it was intended;

(d) Has the required Furniture, Fixtures, and Equipment complete and fully operational; and

(e) All certifications for design and equipment have been provided to Federal Partners and all warranties (except for warranties for punch list items which will be assigned at the time, regardless of Federal Partner's Beneficial Occupancy of the space) have been assigned to the Federal Partners.

(f) Non-monetary Commencement of Operations Contributions should be fully operational

(g) Monetary Commencement of Operations Contributions must be conveyed to Federal Partners in advance such that the equipment and services to be funded by such monetary Commencement of Operations Contributions are in place and fully operational.

2.7 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 LPOE, and issued pursuant to authority granted under the "Otay Mesa East Toll Facility Act," California Streets & Highways Code § 31460 *et seq.*

2.8 Business Day – Means Monday through Friday, except any legal federal public holiday, any day during a United States Government shutdown, and any day during a closure of the border.

2.9 CALOSHA – Means California Occupational Safety and Health Administration.

2.10 CBP Donations Acceptance Agreement or CBP DAA – The donation acceptance agreement accepting CBP's portion of the Commencement of Operations of Contributions and future donations under this FPA, which will be as an unconditional gift.

2.11 CBP Fund - The Trust Agreement fund by this name as described in Section 6.6.2(g)(3).

2.12 Commencement of Operations Contributions – Means the SANDAG contributions described in Section 6.5.

2.13 Commencement of Toll Operations – Means when SANDAG begins imposing tolls pursuant to the Tolling Agreement.

2.14 Construction Services Agreement - The agreement made by and between SANDAG and a contractor for construction services for the LPOE.

2.15 Contractor or Offeror – For purposes of the following, the term "Contractor" or "Offeror" or similar terms mean Project Sponsors:

- (a) Prohibition on ByteDance Covered Application (Jun 2023);
- (b) Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab Covered Entities. (Dec 2023);
- (c) 52.204-29 Federal Acquisition Supply Chain Security Act Orders—Representation and Disclosures (Dec 2023);
- (d) 52.204-30 Federal Acquisition Supply Chain Security Act Orders—Prohibition (Dec 2023);
- (e) 52.240-1 Prohibition on Unmanned Aircraft Systems Manufactured or Assembled by American Security Drone Act-Covered Foreign Entities;
- (f) 52.204-24 (Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment);
- (g) 52.204-25 (Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment); and
- (h) Any other F.A.R. provisions in this Agreement referencing a “contractor”, “offeror” or similar term to GSA and/or CBP.

2.16 Corridor – Has the meaning provided for this term in California Streets and Highways Code, Section 31462, as amended from time to time.

2.17 Design Contract - The contract by and between SANDAG and a designer for design and engineering services for the LPOE.

2.18 LPOE Donation Acceptance Agreement or LPOE DAA – Means the donation acceptance agreement providing for GSA’s acceptance of the LPOE land (which is the contiguous land under the LPOE Facilities plus the land necessary for a future vault and firing range), and the LPOE Facilities, and GSA’s portion of the Commencement of Operations Contributions that are to be accepted by GSA further described in Section 6.5.

2.19 Effective Date – Means the date this Agreement is fully executed by all the Parties.

2.20 Facility Operation Fund - The Trust Agreement fund by this name as described in Section 6.6.2(g)(2).

2.21 Federal Partners - The U.S. Department of Homeland Security, acting by and through U.S. Customs and Border Protection (“**CBP**”), and the U.S. General Services Administration (“**GSA**”).

2.22 Final Completion – Means all the requirements of Beneficial Occupancy have been met, all punch list items are complete, and the Federal Partners have accepted the punch list items.

2.23 Fiscal Year means the federal fiscal year beginning October 1 and ending September 30.

2.24 FMCSA Space means that portion of the CVEF that will be reserved for FMCSA, the initial buildout of which will include space to accommodate future needs, to include:

BUILDINGS. Main CVEF administration building is a total is 26,000 Sq. Ft. of which includes the FMCSA space of 731 Sq. Ft. (approximately) and includes without limitation dedicated locker space*, break room space (150 Sq. Ft.), and space within the observation booth to allow targeting of commercial vehicles for inspection*. *Square footage to be determined in the 95% Design Package.

COMMERCIAL INSPECTION BAY #5. CVEF in total has 5 inspection Bays totaling 11,000 Sq. Ft.; FMCSA's portion of that space (#5) is approximately 2,310 Sq. Ft.

CANOPIES. Covered FMCSA POV staff parking for 6 stalls.

SITE ELEMENTS. Uncovered FMCSA visitor parking for 4 stalls and 4 stalls for out-of-service COV.

ADDITIONAL SPACE. Approx. 2350 Sq. Ft. annex structure containing the K-9 kennel, trash enclosure, hazardous waste storage, and utility yard, all of which serves the entire CVEF facility.

2.25 Furniture, Fixtures, and Equipment or FFE - Information technology infrastructure and systems, furniture, operational security components (e.g., access control, intrusion detection, building cameras, etc.), voice/data, fleet, signage, CBP inspection-related equipment, and similar tools/equipment/property that CBP requires to operate the LPOE Facilities at full capacity. Weapons are not included in the definition of FFE.

2.26 GSA's Construction Manager – An independent construction manager retained by GSA but funded by Sponsors in accordance with Section 6.7 below.

2.27 Indenture – Means the Indenture of Trust to be entered into by SANDAG and the Indenture Trustee (which means the financial institution and fiduciary serving as the trustee under the Indenture, including any successor trustee(s)) that provides for the issuance of the Bonds, and any amendments or supplements thereto entered into in accordance with the Indenture's terms.

2.28 INFRA – Means the Nationally Significant Multimodal Freight & Highway Projects competitive grants program that is administered by USDOT and also known as "Infrastructure for Rebuilding America."

2.29 Intelligent Transportation System – The components comprised of devices (e.g., sensors, electronic signs, fiber and wireless communication, traffic surveillance devices) located on the approaches to or within the LPOE and corresponding Mexican land port of entry that enable tolling and transportation management operations at the border crossing region. The system will not include any elements capable of video or audio surveillance of the LPOE.

2.30 Land Border Integration Equipment – Means technology, situational awareness / port surveillance, and process improvement to achieve accurate, secure, and efficient processing of all travelers while further promoting legitimate trade and travel. Includes biometric entry and exit, radio frequency Identification, lane flow optimization, license plate readers, and light emitting diode (LED) signage.

2.31 LPOE - Has the meaning provided in the introductory paragraph.

2.32 LPOE Ancillary Facilities - SR-11, the Roadway Toll Collection System and Back-Office System, the cross-border Intelligent Transportation System, and the CVEF.

2.33 LPOE Facilities – Collectively, fully functional Net-Zero Ready Port of Entry as described below, and in accordance with LPOE Specifications and the Approved Design. LPOE Facilities will include the following northbound lanes: 7 Privately Owned Vehicle (POV) lanes and 5 Commercially Owned Vehicles lanes. The LPOE Facilities will also include buildings, canopies, and site work to accommodate inspections for north and south-bound commercial and noncommercial vehicles, as follows:

A. BUILDINGS: (i) Main Building/Head House; (ii) Commercial Operations; (iii) Commercial Inspection Building; (iv) Day Kennel; (v) Outbound Support Building; and (vi) Commercial Export.

B. CANOPIES: (i) Primary Inspection POV Inbound (7 lanes); (ii) Primary Inspection COV Inbound (5 lanes); (iii) Commercial Dock Unloading Area (65 docks); (iv) POV Secondary Inspection; (v) COV Exit Booths (3 lanes); (vi) Primary Inspection POV Outbound (3 lanes); (vii) Primary Inspection COV Outbound (3 lanes); and (viii) Outbound Export Dock (16 Docks).

C. SITE ELEMENTS: (i) Pre-primary and Secondary NII Technology for POV and COV; (ii) Port Runner Suppression System; (iii) Incidental Hazmat Containment (drive-through); (iv) Dog Relief Areas; (v) Parking; (vi) traffic circulation; and (vii) any other elements necessary to support LPOE Facilities as may be shown on Approved Design.

The LPOE Facilities will also include the Commencement of Operations Contributions as described in Section 6.5 (below). If the LPOE Facilities listed above are expanded in the future, through the Parties' mutual agreement, the term LPOE Facilities as used in this Agreement will include such expansions. Any future vault or shooting range is specifically excluded from the definition of LPOE Facilities in this Section 2.33.

2.34 LPOE Specifications - The applicable *CBP Land Port of Entry Design Standards* dated December 2023 and *GSA Facilities Standards for the Public Buildings Service (PBS-P100)* dated May 2024 that are in effect prior to the Approved Design, as such standards may be modified through mutual agreement of the Parties under the Change Management Process Agreement or as provided in Section 6.2.4 herein.

2.35 Maximum Funding Levels – The total amount that each fund described in Section 6.6.2(g) is to receive over the life of the Agreement, inclusive of interest, until lifted in accordance with this Agreement.

2.36 Modernization Fund - The Trust Agreement fund by this name as described in Section 6.6.2(g)(5).

2.37 Notice – Any notice given under this Agreement.

2.38 OSHA – Means U.S. Department of Labor Occupational Safety and Health Administration.

2.39 Party or Parties – Have the meaning provided in the introductory paragraph.

2.40 Pre-Construction Services Agreement - The agreement made by and between SANDAG and a contractor for pre-construction services for the LPOE.

2.41 Project - Has the meaning provided in the introductory paragraph and Section 4.0.

2.42 Project Funds - Has the meaning set forth in Section 6.6.2(g).

2.43 Project Fund DAA means a donation acceptance agreement between SANDAG and one of the Federal Partners to be executed in advance of SANDAG's donation of Residual Revenues to the Funds identified in Section 6.6.2(g) pursuant to Section 6.6.

2.44 Project Liquidity Fund – The Indenture fund by this name as described in Section 6.6.2(d).

2.45 Project Sponsors or Sponsors - The California Department of Transportation (“CALTRANS”) and the San Diego Association of Governments (“SANDAG”).

2.46 Residual Revenues – Toll Revenues that remain after SANDAG has fully satisfied its annual obligation (if any) to SICT under Section 3.03(b) of the Tolling Agreement and fully satisfied its annual payment and reserve funding obligations under the Indenture.

2.47 Roadway Toll Collection System – The hardware, software, and other equipment responsible for the collection, processing, and transmitting of information required to prepare, frame, and validate a toll transaction through electronic means, as well as manage access to the LPOE, and displaying the toll rate to potential border crossers. This system shares information with the Back-Office System for account processing and collection purposes.

2.48 SANDAG Eligible Expenses – Has the meaning provided in Section 6.6.2(h)(1).

2.49 SANDAG Fund - The Trust Agreement fund by this name as described in Section 6.6.2(g)(4).

2.50 SANDAG Monetary Contributions or Monetary Contributions – All SANDAG toll revenue contributions and monetary Commencement of Operations Contributions made to the Project Funds pursuant to the Agreement.

2.51 SANDAG Net Revenues – SANDAG's portion of toll revenues remaining, if any, after SANDAG has paid certain of its operations and maintenance expenses pursuant to the Tolling Agreement.

2.52 STBG – The Surface Transportation Block Grant (STBG) program, established under 23 U.S. Code § 133.

2.53 TIFIA Loan – A loan that may be made by the USDOT through the Build America Bureau to SANDAG for the purpose of financing a portion of the LPOE.

2.54 Tolling Agreement – The Amended and Restated Agreement between the Ministry of Infrastructure, Communications and Transportation of the United Mexican States and SANDAG 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 October 24, 2022, as amended from time to time.

2.55 TransNet – Funds generated through a half-cent sales tax in San Diego County pursuant to the San Diego Transportation Program Ordinance and Expenditure Plan (Commission Ordinance 04-01), as amended, adopted pursuant to California Public Utilities Code § 132000.

2.56 Trust Agreement – The Residual Revenues Trust Agreement to be entered into by SANDAG and the trustee thereunder, providing for the application of Residual Revenues in accordance with Section 6.6.2 hereof.

3.0 Interpretation

3.1 This Agreement does not amend, alter, modify, or supersede the Presidential permit, the LPOE Donation Acceptance Agreement, or the CBP Donation Acceptance Agreement. As between the Presidential permit, the LPOE Donation Acceptance Agreement, the CBP Donation Acceptance Agreement, this Agreement and the Change Management Process Agreement, the following is the order of control: the Presidential permits, the LPOE Donation Acceptance Agreement/CBP Donation Acceptance Agreement, this Agreement, and then the Change Management Process Agreement.

3.2 The division of this Agreement into sections and the insertion of headings are for convenience of reference only and are not to affect the construction or interpretation of this Agreement.

3.3 Words indicating the singular include the plural and vice versa and words indicating gender include all genders.

3.4 References to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the referenced statute or regulation.

3.5 The terms “including,” “includes,” and “include” will be interpreted to mean “including without limitation.”

3.6 Unless otherwise indicated, references to sections include all subsections under the section referenced, and references to subsections include all sub-subsections.

3.7 Words not otherwise defined that have well-known meanings in relation to the subject matter of the Project, are used in accordance with such recognized meanings.

3.8 References to people or entities include their respective permitted successors and assigns and, in the case of governmental entities, entities succeeding to their respective functions and capacities.

3.9 When a time is expressed herein to begin or end at, on, or within a specified day, or to continue to or within a specified day, the time period includes that day. When a time period is expressed herein to begin after or to be from a specified day, the time period does not include that day. Where anything is to be done within a time period expressed hereinafter, from or before a specified day, the time period does not include that day. If the last day of a time period is not a Business Day, the time period will end on the next Business Day.

3.10 The Parties will, to the extent possible, interpret the Agreement in a manner that gives reasonable meaning to all components of the Agreement and that eliminates conflict to the maximum extent possible. A Party must notify the other Parties of any perceived conflict promptly

upon becoming aware of such perceived conflict and the Parties will thereafter coordinate in good faith to determine a reasonable interpretation as described above.

3.11 If the Agreement contains differing provisions on the same subject matter, the provisions that provide greater detail will prevail.

3.12 The Agreement will be construed simply, as a whole and in accordance with the fair meaning of the language used and not strictly for or against any Party.

3.13 The Parties acknowledge and agree that: (a) the Agreement is the product of an extensive and thorough, arm's-length negotiations; (b) each Party has been given the opportunity to independently review the Agreement with legal counsel; and (c) each Party has the requisite experience and sophistication to negotiate, understand, interpret and agree to the particular language of the provisions of the Agreement. Accordingly, in the event of a conflict, ambiguity or inconsistency in or dispute regarding the interpretation of the Agreement, the Agreement will not be interpreted or construed against the Party preparing it.

3.14 In all other respects, in the event of a conflict, ambiguity or inconsistency within the Agreement, general rules concerning construction of contracts will be applicable.

4.0 Description of the Project

4.1 The Project includes construction of a new commercial and private vehicle land port of entry at Otay Mesa East. The Project also includes the recently completed SR-11, a two-mile stretch of highway that spans from the SR-125/SR-905 interchange to the U.S.-Mexico International Border.

4.2 The LPOE will be located on a portion of an approximately 100-acre parcel in San Diego County, California, approximately 2 miles east of the existing Otay Mesa Land Port of Entry. The LPOE will not be initially designed to process pedestrians or those motorcoaches or buses carrying passengers who are required to be processed as pedestrians, including any secondary drivers, unless such secondary drivers are present due to their participation in an official driver training program. Any future expansion to be funded by Project Sponsors to enable the LPOE to process pedestrians will be subject to a new donation acceptance process. All Parties have approved the Full Buildout Plan (attached as Exhibit B), which depicts full build out of the Project as cleared under the EIR/EIS. The Full Buildout Plan may not be altered unless through mutual written agreement of all Parties, until such time as the property is accepted by Federal Partners. Any modification to the LPOE after acceptance by the Federal Partners does not require further agreement by the Parties.

The Parties agree that only the land required for the LPOE Facilities, vault, and firing range will be transferred to GSA under the LPOE DAA, as further described in Section 6.4. Future expansions to the LPOE Facilities that will be done in accordance with the Full Buildout Plan, will require the execution of a separate donation acceptance agreement.

If the Project Sponsors use any portion of the 100-acre parcel for uses other than those contemplated in the Full Buildout Plan (e.g., interim use), the Project Sponsors agree to provide prior written notice to the Federal Partners. Upon such notice, GSA or CBP may request that the Project Sponsors address any safety and security concerns, as well as concerns about

inconsistent uses, to the Otay Mesa East LPOE arising out of such use. The Parties will work in good faith to resolve any reasonable safety and security concerns. The Project Sponsors agree that they will not sell any portion of the 100-acre parcel without the prior written consent of all Parties.

4.3 Project Sponsors and Federal Partners will collaborate to align completion of construction of the LPOE with CBP staffing availability. After the Effective Date of this Agreement, Sponsor(s) may award Pre-Construction Services Agreement and/or the Construction Services Agreement, provided however that the Federal Partners have no liability. Sponsors will not issue any Notice to Proceed under an Approved Construction Package pursuant to such contracts unless and until the LPOE DAA and CBP DAA are both fully executed by the Parties' Authorized Representatives. If Project Sponsors issue any other Notice to Proceed, the Federal Partners will not have any liability.

5.0 Term. The Agreement commences on the Effective Date and, unless otherwise terminated earlier in accordance with the provisions of this Agreement, will continue to the later of: a) January 1, 2063; b) the date that all of SANDAG's obligations under the Indenture, any TIFIA Loan Agreement, and the Mexican Tolling Agreement have been satisfied and paid in full; or c) so long as the Mexican Tolling Agreement continues beyond the later of subsections a and b, under substantially similar terms. If the Agreement continues pursuant to subsection (c) hereof, Residual Revenues will be allocated as provided in 6.6.2(f).

6.0 Project Sponsor Obligations

6.1 Project Funding. The Project Sponsors will use their best efforts to secure the funding identified in Table 6.1 to finance delivery of the LPOE Facilities and LPOE Ancillary Facilities.

Table 6.1 Identified Funding Sources (in millions)	
INFRA	\$150
TCEP	\$192
STBG	\$71
Bonds/TIFIA Loan	\$271
TransNet	\$15
Total	\$699

While the Project Sponsors may pursue a TIFIA Loan as indicated in Table 6.1, the Project Sponsors may choose not to obtain such a loan, in which case this portion of the funding may be funded completely with Bonds (i.e., taxable and private activity bonds).

6.2 LPOE Facilities Delivery

6.2.1 Project Sponsors, at their sole cost and expense, are responsible for delivery of the LPOE Facilities as outlined in this Agreement. SANDAG will provide Federal Partners with LPOE Facilities in accordance with Section 6.4. The Project Sponsors will deliver the LPOE Facilities (exclusive of the Commencement of Operations Contributions) through the construction manager/general contractor alternative project delivery method.

6.2.2 Approved Design. Project Sponsors will provide LPOE design packages (including plans and specifications) to Federal Partners for approval in accordance with Section 7.2 below at the following milestones: technical commentary at 30%, 65%, and 95%; final design approval at 100%, which will be in writing (“Approved Design”). Federal Partners’ review and/or approval of any design is solely for the benefit of Federal Partners and does not limit Project Sponsors, their contractors, and/or their subcontractors from responsibilities for all design.

6.2.3 Approved Construction Package. Project Sponsors will provide Construction Packages (which means a package comprising a severable portion, in accordance with Section 16 herein for packages mutually agreed upon by the Parties, of the construction services to be performed under the Construction Services Agreement) to Federal Partners in accordance with Section 7.2 below at the following milestones: technical review and comments at 50% and 90%; final approval at 100% (“Approved Construction Package”), which must be in writing and include a mutually agreed on commissioning plan in accordance with Section 7.4 if commissioning is applicable to the work covered under the Construction Package. Such Approved Construction Package is required for Project Sponsors to proceed to construction of any Approved Construction Package. Federal Partners’ approval of a Construction Packages does not limit Project Sponsors, their contractors, and/or their subcontractors from responsibilities for construction services.

6.2.4 The Parties have the following roles with respect to design changes and/or construction change orders to the LPOE Facilities:

a) Project Sponsors are only required to accept design change(s) and/or construction change order(s) from Federal Partners that vary the LPOE Specs if such changes are: 1) Reasonably Necessary; 2) required to comply with OSHA and/or CALOSHA requirements; or 3) otherwise required by the U.S. Federal Government through Executive Order, statute, regulation, or written CBP policy, but in each case to protect life, health, and safety, and which also apply to all similar land ports of entry. Such design change(s) or construction change orders will not be permitted after Beneficial Occupancy of the LPOE Facility in question; for purposes of this subsection, the term Beneficial Occupancy will not include the requirement that the LPOE Facility/Facilities in question have been conveyed to and accepted by the Federal Partners.

b) For purposes of this Section 6.2.4, “**Reasonably Necessary**” means a change that the Parties mutually agree is: (a) consistent with CBP standard practices at comparable border crossings; (b) in accordance with applicable United States federal agencies’ operational policies; and (c) practicable given SANDAG’s financial constraints, funding availability, and the LPOE’s overall viability considering the cost and expense of implementing the proposed design changes and/or construction change orders under the Design Contract, the Pre-Construction Services Agreement, the Construction Services Agreement, or the Change Management Process Agreement, as applicable.

c) To the extent that SANDAG and/or Federal Partners do not have sufficient funds to support a required or permitted design change and/or

construction change order pursuant to this Section 6.2.4, the Parties will collaborate to identify necessary funding to support such design change/change order, in an attempt to deliver the LPOE Facilities timely.

6.3 LPOE Ancillary Facilities

6.3.1 Project Sponsors are responsible, at their sole cost and expense, for delivery of the LPOE Ancillary Facilities prior to Commencement of Toll Operations.

6.3.2 Project Sponsors will, at their sole cost and expense, operate and maintain the LPOE Ancillary Facilities during the term of the Agreement in a state of good repair.

6.3.3 The LPOE Ancillary Facilities are excluded from the LPOE Facilities.

6.3.4 FMCSA

a) Project Sponsors will provide FMCSA Space and contribute up to \$500,000 towards initial Communications, IT, operational security components, and furnishing for Federal Motor Carrier Safety Administration ("**FMCSA**"), which will be a part of the CVEF. Such contribution is conditional on FMCSA and CHP reaching agreement on co-location of FMCSA at the CVEF.

b) FMCSA will be exempt from traditional cost for operations and maintenance of the FMCSA Space (e.g., utilities, rent, janitorial, security, building operations and maintenance and repair and replacement), which the Project Sponsors will be responsible to ensure are provided and/or paid. FMCSA will be financially responsible for the salaries of its personnel and any cost beyond those identified in the preceding sentence.

6.4 LPOE Conveyance. The Project Sponsors will effect, free of charge, to the Federal Partners, a transfer of title to the LPOE Facilities to the U.S. Government, acting by and through the respective Federal Partner, in accordance with both the LPOE Donation Acceptance Agreement and the CBP DAA (each of which must be executed prior to such donation). The LPOE Donation Acceptance Agreement and CBP DAA to include federal government donation/gift authorities now or in the future. The Parties will endeavor to negotiate the DAAs in good faith and execute the same in a form reasonably acceptable to all Parties by a goal date of March 31, 2025. This Agreement is subject to approval and signature by GSA and CBP of their respective DAAs; if the LPOE DAA and CBP DAA are not executed within a reasonable time thereafter, this Agreement will be deemed void unless the Parties agree to extend the time to negotiate the DAAs.

Federal Partners are under no obligation to accept conveyance of LPOE Facilities that have not achieved Beneficial Occupancy, nor are Sponsors relieved of their obligation to achieve Final Completion of LPOE Facilities. For purposes of this subsection, the term Beneficial Occupancy will not include the requirement that the LPOE Facility/Facilities in question have been conveyed to and accepted by the Federal Partners.

The Parties hereby acknowledge and agree that the Project Sponsors' execution, delivery and performance of the LPOE Donation Acceptance Agreement will not impair the power and authority of SANDAG to impose tolls or user fees for the entrance to or use of SR-11, or to pledge all or any portion of the resulting revenues to secure the repayment of Bonds or for any other legally permissible use. Further, the Parties acknowledge and agree that if the Project Sponsors do not

deliver the LPOE Facilities, this Agreement may be terminated by any Party. Finally, SANDAG agrees that federal employees and contractors who are utilizing the LPOE for legitimate work purposes will not be charged a Toll.

6.5 Commencement of Operations Contributions. Prior to Commencement of Toll Operations and prior to Beneficial Occupancy, SANDAG will, subject to the Federal Partners' gift acceptance authority (and when applicable for SANDAG acquisition of equipment, software, or other security technology, subject to CBP's requirements, specifications, and preapproval), fund \$81.7 million for:

6.5.1 Acquisition and installation of Non-Intrusive Inspection equipment and related software and security technology;

6.5.2 Land Border Integration equipment;

6.5.3 Furniture, Fixtures, and Equipment (including fleet and signage) for the LPOE Facilities; and

6.5.4 Deposit \$10 million in the Facility Operation Fund (as further defined in Section 6.6.2(g)(2)). Such amount is included in the \$81.7 million amount referenced above.

Whereas for all other LPOE Facilities (described in Section 2.33 above) the cost risk related to delivery is on SANDAG, the Parties acknowledge that Sponsors' responsibility for the Commencement of Operations Contributions is limited to the amount identified in Section 6.5 (\$81.7 million). If the cost to deliver such contributions exceeds such amount, SANDAG and CBP will work together expediently to reduce scope of such Contribution(s). The Parties acknowledge, however, that reduction in scope could negatively impact CBP's operational capacity at the LPOE.

6.6 SANDAG Monetary Contributions

6.6.1 General

a) SANDAG's anticipated Monetary Contributions are as outlined below.

b) SANDAG Monetary Contributions will be made in advance for the Facility Operation Fund and Modernization Fund, and on either a reimbursement basis or in advance (at the election of the Party requesting the funds) for the CBP Fund and SANDAG Fund (but in each case, no less than annually) based on a statement by the Party requesting funds that funds were spent or will be spent (as the case may be) in aid of the Party's functions at the Otay Mesa East LPOE. All SANDAG Monetary Contributions to the Federal Partners pursuant to this Agreement will be by unconditional donation in aid of the Partners' operation and/or maintenance functions at the LPOE, and as further described below herein.

SANDAG will cause reimbursement and/or advance payment by the Trust Agreement Trustee to the requesting Party within 30 days of a Party's submission of a completed Fund Request Form, in substantially the same form as Exhibit I (such Exhibit I will be attached to this Agreement by future amendment). Exhibit I will only require a statement by the requesting Party that the funds have been or will be

expended in aid of the Party's function at the LPOE, and those other requirements specifically noted in this Agreement. The related Project Fund DAA to permit such transfer must be fully executed and cited on the related Fund Request Form, in substantially the same form as Exhibit J (such Exhibit J will be attached to this Agreement by future amendment). Notwithstanding anything to the contrary in this Agreement, the Federal Partners will not be restricted in their use of reimbursed funds once such funds are reimbursed.

6.6.2 Indenture and Trust Agreement

a) SANDAG anticipates financing a portion of delivery of the LPOE Facilities and the LPOE Ancillary Facilities through the issuance(s) of Bonds and, potentially, a subordinate TIFIA Loan, both of which will be secured by a lien on SANDAG Net Revenues. The Bonds will be issued and the TIFIA Loan, if obtained, will be incurred in accordance with the Indenture. Pursuant to the Indenture, SANDAG will appoint a trustee (the "Indenture Trustee") to ensure that the SANDAG Net Revenues are segregated and disbursed in accordance with the Indenture. The Indenture Trustee will be required to create and fund various debt service, reserve, and operations accounts, in accordance with the Indenture. SANDAG will ensure that the Indenture provides that Residual Revenues will be transferred by the Indenture Trustee, free and clear of the lien of the Indenture, from the Indenture's Project Liquidity Fund to the fiduciary serving as trustee under the Trust Agreement (the "Trust Agreement Trustee"), to be applied by the Trust Agreement Trustee in accordance with the Trust Agreement. The Indenture Trustee and the Trust Agreement Trustee may be the same financial institution. The Trust Agreement cannot be materially modified from this structure without written agreement from all Parties.

b) SANDAG will structure the Indenture to reflect the anticipated flow of funds described in Exhibit A-1 (Indenture Flow of Funds); the written agreement of all Parties is required for SANDAG to modify the Indenture in a way that would materially alter Exhibit A-1.

c) SANDAG will structure the Trust Agreement to reflect the anticipated flow of funds described in this Agreement as shown in Exhibit A-2 (Trust Agreement Flow of Funds), and as further outlined in this Agreement, and will ensure in the Trust Agreement that the Trust Agreement Trustee is required to release funds to a Party: 1) in response to its completed Fund Request Form; 2) if there are sufficient Residual Revenues and/or Monetary Contributions in the applicable fund; and 3) only up to the applicable Maximum Funding Level as defined below, or (if the Maximum Funding Level no longer applies), as provided for herein.

d) Project Liquidity Fund. The Indenture will provide for the creation of the Project Liquidity Fund. The Project Liquidity Fund will be used to provide security for the Bonds and the TIFIA Loan, if obtained, and will be released by SANDAG once such Bonds and TIFIA Loan are paid in full or the Project Liquidity Fund is permitted to be released in accordance with the Indenture (whichever is earlier), at which time the released funds and future Residual Revenues will be used solely in accordance with subsection e or f below, as applicable. There is no Maximum Funding Level for the Project Liquidity Fund. The Trust Agreement Trustee will provide the Federal Partners with an accounting of the Project Liquidity Fund

once per year by no later than December 31st of each year or more frequently, if requested by any Party.

e) This subsection e will only apply during the time period from when any or all of the Project Liquidity Fund is released as discussed in Section 6.6.2(d) (above) up until the later of: a) January 1, 2063 or b) the date that all of SANDAG's obligations under the Indenture, any TIFIA Loan Agreement, and the Mexican Tolling Agreement have been satisfied and paid in full. Funds that are released pursuant to Section 6.6.2(d) above and Residual Revenues received thereafter, will first be applied to the Project Fund(s) that has/have not reached its/their Maximum Funding Level, as provided for in this Agreement. If the Maximum Funding Levels for all Project Funds have been reached, then the released funds from the Project Liquidity Fund and Residual Revenues received thereafter will be disbursed as follows: half of such funds will be deposited in the CBP Fund and the other half will be deposited in the SANDAG Fund. The Parties' right to access such funds will continue to be as provided for in this Agreement.

f) This subsection f will only apply if this Agreement continues pursuant to Section 5.0(c). Residual Revenues will first be applied to the Project Fund(s) that has/have not reached its/their Maximum Funding Level, as provided for in this Agreement. Once such Maximum Funding Levels have been reached, then such Maximum Funding Levels will be lifted (but all other requirements of this Agreement will continue to apply), and Residual Revenues will be disbursed in equal portions (one-thirds) to each of the following funds under the Trust Agreement: 1) the Facility Operation Fund; 2) the CBP Fund; and 3) the SANDAG Fund.

g) Project Funds and Uses. The Trust Agreement will provide for the creation of the following accounts (referred to collectively as the "**Project Funds**"), which will have the following eligible uses and Maximum Funding Levels. Project Funds will not be used to fund any LPOE vault or firing range (e.g., for buildout, operations and maintenance expenses, modernization, repair, etc.).

1) [Intentionally Left Blank]

2) Facility Operation Fund. Payments from the Facility Operation Fund will be made in accordance with this Agreement, consistent with GSA policy for BA 61 funds. Prior to each federal fiscal year, GSA will submit to SANDAG and the Trust Agreement Trustee: its completed Fund Request Form, which will include an estimate of its operations and maintenance expenses for the LPOE for the immediately preceding twelve months, and an estimate of the operation and maintenance costs for the following fiscal year. Within 30 days of receiving the completed Fund Request, the Trust Agreement Trustee must transmit the requested amount, or the amount available in the Facility Operation Fund if less than the requested amount, to GSA by unconditional donation in aid of GSA's function to operate and maintain the Otay Mesa East LPOE under the Project Fund Donation Acceptance Agreement. If funds are not received within the stated 30 days, the Federal Partners may choose to cease operations at the LPOE as referenced in Section 7.1.1. If additional operations and maintenance costs are incurred after such annual request, GSA may submit an additional Fund Request, either prior to the need or by reimbursement, and the Trustee will

fund such requests to the extent that funds are available in the Facility Operation Fund and to the extent there is capacity within the applicable Maximum Funding Level. The Maximum Funding Level of the Facility Operation Fund is \$497 million; such amount will not include any monetary Commencement of Operations Contributions or funding for the GSA Construction Manager referenced in Section 6.7.

3) CBP Fund. The CBP Fund will be used solely to fund CBP's expenses for services, equipment, personal property, fixtures, operation, maintenance, personnel, or software/technology that supports the LPOE Facilities or Corridor at the LPOE. Within 30 days of receiving the Fund Request Form and related Project Fund DAA, the Trust Agreement Trustee must transmit the requested amount, or the amount available in the CBP Fund if less than such amount, to CBP by unconditional donation in aid of CBP's function to operate the LPOE. The Maximum Funding Level of the CBP Fund is \$596 million; such amount will not include any monetary Commencement of Operations Contributions.

4) SANDAG Fund. The SANDAG Fund will be used solely (i) to reimburse SANDAG or CALTRANS, or both, for any SANDAG Eligible Expenses, including operations and maintenance obligations under Section 6.3, and (ii) to pay debt service on the Bonds or the TIFIA Loan, or both. SANDAG agrees to pledge amounts in the SANDAG Fund to secure the repayment of the Bonds or the TIFIA Loan, or both. The Maximum Funding Level of the SANDAG Fund is \$439 million; such amount will not include any monetary Commencement of Operations Contributions.

5) Modernization Fund. Payments from the Modernization Fund will be made in advance to GSA for funds it will expend for modernization expenses as defined in Section 6.6.2(h)(3), below. After Solicitation but prior to award of a contract for modernization expenses, GSA will submit a Fund Request Form containing an estimate of costs for the modernization services to SANDAG and the Trust Agreement Trustee with citation to the applicable Project Fund DAA. Within 30 days of receiving the same, the Trustee must transmit the requested amount, or the amount available in the Modernization Fund if less than the requested amount, to GSA in accordance with this Agreement and pursuant to the Project Fund DAA. If contract costs for modernization rise above the initial request, GSA may request and the Trust Agreement Trustee will fund the additional costs to the extent that funds are available in the Modernization Fund and to the extent there is capacity within the applicable Maximum Funding Level. The Maximum Funding Level of the Modernization Fund is \$540 million; such amount will not include any monetary Commencement of Operations Contributions or funding for the GSA Construction Manager referenced in Section 6.7.

6) All Project Funds will earn interest provided that such interest earnings comply with applicable tax-exempt bond requirements. All interest that a Project Fund accrues will be included in such fund's gross amount to be counted toward such fund's Maximum Funding Level.

7) If estimated costs increase, the Maximum Funding Levels can be increased by written mutual concurrence of the Parties.

h) Expenses

1) SANDAG Eligible Expenses. The Trust Agreement will provide that SANDAG Eligible Expenses are any expenses eligible for reimbursement pursuant section 31475 of the California Streets and Highways Code, as the same may be amended from time to time.

2) Expenses to be paid from the Facility Operation Fund and CBP Fund are described above.

3) Modernization Expenses - Any costs incurred by GSA for: A) services, equipment, goods, fixtures, operation, maintenance, personnel, or software that modernizes the LPOE Facilities; B) repair consistent with GSA policy for BA 54 funds and capital improvements to repair or rehabilitate the LPOE Facilities, or C) capital improvements to expand the LPOE Facilities capacity, to improve the LPOE Facilities operations, or to increase public transit and non-motorized options in the Corridor, excluding any expenses that have been reimbursed by the Facility Operation Fund.

6.6.3 Residual Revenues. The Project Funds will be funded solely through Residual Revenues and related interest, to the extent available.

6.6.4 Project Funds; Funding and Priority. SANDAG will ensure that the Indenture and Trust Agreement each provides that Residual Revenues, if any, will be used to fund the Project Funds accounts on an annual basis, as follows:

a) If the Project Liquidity Fund has less than \$60 million at the close of SANDAG's fiscal year (June 30), then the Residual Revenues will be split in equal shares between the following Project Funds that have not yet met their respective Maximum Funding Levels: Project Liquidity Fund, the Facility Operation Fund, the CBP Fund, and the SANDAG Fund (up to each such funds' Maximum Funding Level). Once all such funds have met their Maximum Funding Levels, then remaining Residual Revenues will be placed in the Modernization Fund up to its Maximum Funding Level. Once all such funds have met their Maximum Funding Level, remaining Residual Revenues will be placed in the Project Liquidity Fund.

b) If the Project Liquidity Fund has \$60 million or more at the close of SANDAG's fiscal year (June 30), then the Residual Revenues will be split in equal shares between the following Project Funds that have not yet met their respective Maximum Funding Levels: the Facility Operation Fund, the CBP Fund, and the SANDAG Fund (up to each such funds' Maximum Funding Level). If all such funds have met their Maximum Funding Levels, then remaining Residual Revenues will be placed in the Modernization Fund up to its Maximum Funding Level. Once all such funds have met their Maximum Funding Level, remaining Residual Revenues will be placed in the Project Liquidity Fund.

6.7 GSA's Construction Manager. GSA will have the right, if it so chooses, to retain and manage its Construction Manager for the LPOE through its own contract. SANDAG will fund up to \$300,000 a year towards such position for the period starting no later than construction notice to proceed and continue until one year following Beneficial Occupancy of the LPOE Facilities, as an advance payment or as a reimbursement as provided for in this Agreement. The Parties will identify the method and timing to transfer such funds. For purposes of this subsection, the term Beneficial Occupancy will not include the requirement that the LPOE Facilities have been conveyed to and accepted by the Federal Partners.

7.0 Federal Partner Functions and Roles

7.1 Operations

7.1.1 Federal Partners acknowledge that SANDAG's Commencement of Operations Contribution may only cover a portion of the costs necessary to outfit and operate the LPOE Facilities. If funds for operations are not available from Project Funds, the Federal Partners are not obligated to operate the LPOE, and may, but are not required to seek appropriated funds.

a) CBP will:

1) Subject to the availability of funds, sufficient budgetary resources, and full funding provided by Sponsors in accordance with this Agreement, and in accordance with the operational policies of U.S. Federal Agencies, as such policies may be revised from time to time, staff the LPOE based on operational requirements as determined by CBP (CBP may scale staffing levels in response to real-time traffic demand, operational constraints, or other factors), with the intent of staffing 10 lanes at the LPOE 365 days/year with operating hours of 16 hours/day for POV and COV.

2) In each year, CBP will make good faith efforts to seek appropriations for staffing of the LPOE through the budgetary process in accordance with federal policies. CBP may also seek necessary appropriations for equipment, operations, and maintenance, vault build out, and firing range build out. CBP does not make the final determination on the budget submitted to OMB or the President.

7.1.2 Subject to availability of funds, GSA will endeavor to support CBP's space needs in regard to Otay Mesa East LPOE if CBP's operations require operation of the Otay Mesa East LPOE.

7.1.3 Estimated Residual Revenue available for Otay Mesa East LPOE is based on a certain estimation of throughput. The Parties understand that numerous factors could impact throughput and therefore Residual Revenue. The Parties are not responsible for any shortfall in the traffic or the funds collected therefrom.

7.2 Project Delivery Participation. The Federal Partners will endeavor to provide prompt action to support completion of design, construction, and commissioning of the LPOE Facilities.

7.2.1 For purposes of this Section 7.2, “prompt” means:

- a) For requirements (such as specifications, security needs, and procurement needs), at the earliest opportunity after the Effective Date, subject to compliance with the Parties’ separate Change Management Process Agreement.
- b) For Design and/or Construction Package approval, review and action within 20 Business Days.
- c) For design changes/construction change orders, review and action within 10 Business Days.
- d) For all other decisions or approval, review and action within 10 Business Days.
- e) Action to include direction, approval, or specific, reasonable requested changes, as required by the situation.

7.3 Authority. Federal Partners will endeavor to make reasonable efforts to secure requisite authorizations to enable the Parties’ performance under the Agreement.

7.4 Port of Entry Acceptance and Commissioning

7.4.1 Federal Partners will endeavor to use reasonable efforts to complete commissioning of the LPOE Facilities before acceptance of the LPOE Facilities. The GSA Commissioning Guide that is in effect at the time the Construction Services Agreement is awarded applies to such commissioning.

7.4.2 The Donation Acceptance Agreement outlines the requirements for acceptance of the Otay Mesa East LPOE.

7.4.3 As part of design submission, there will be an agreed upon Commissioning plan, which must be consistent with *GSA Facilities Standards for the Public Buildings Service (PBS-P100)* dated May 2024.

8.0 OME Corridor Working Group

A working group, to be known as the *OME Corridor Working Group*, will meet, as appropriate, to discuss and make recommendations to their respective agencies related to their respective agency’s usage of the Project Liquidity Fund or Residual Revenues pursuant to Section 6.6.2. The OME Corridor Working Group will be made up of eight representatives, with each Party appointing two representatives. In formulating its recommendations, the OME Corridor Working Group will evaluate and consider the LPOE’s operation and maintenance needs; Project Fund balances and ability to meet the operation and maintenance needs; forecasted Residual Revenues; and potential LPOE operational and capital improvements. The OME Corridor Working Group may also make recommendations for their respective agencies to consider related to amendments to this Agreement, expansion of the LPOE Facilities, and related financing.

Notwithstanding any such recommendations, each Party controls how they will use their portion of the Project Liquidity Fund (however, such use must be in accordance with this Agreement).

9.0 Joint Environmental Documents

9.1 CALTRANS is responsible for preparing the necessary environmental documentation to ensure compliance with Applicable Law, including, but not limited to, the National Environmental Policy Act of 1969, as amended, and the California Environmental Quality Act. CALTRANS is the lead agency for compliance with the California Environmental Quality Act. USDOT, working through the Federal Highway Administration, is the lead agency for compliance with the National Environmental Policy Act.

9.2 CALTRANS acknowledges and understands that GSA and CBP are Cooperating Agencies providing input into the environmental documents, and will be relying on the environmental documents to complete their federal actions on the Project, including whether to accept any gift or donation of the LPOE Facilities. The Parties will cooperate in the development of the Project environmental documents and provide timely comments and information, as necessary. GSA is in the process of adopting the approved EIR/EIS – Record of Decision.

10. Warranty. In addition to all other warranties in its contracts with the CMGC and architect/engineer, the Project Sponsors will cause all the warranties in LPOE Specifications and the construction warranty as found in FAR 52.246.21 to run directly to and be enforceable by GSA. GSA will be provided all warranties in the provisions found in FAR 52.236-23, either via SANDAG or as a third-party beneficiary to the applicable Design Contract.**11.0 Section 889 Compliance.** Project Sponsors have reviewed sections 52.204-24 and 52.204-25 of the Federal Acquisition Regulation and represent their compliance as reflected in the attached Exhibit C, and will abide by the Prohibition of Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

12.0 Limitations. Nothing in this Agreement will be construed to bind any Party beyond their legal authority to do so.

13.0 Cooperation. The Parties will endeavor to cooperate on all aspects of the Project. This includes providing necessary information in a timely manner, coordinating mutual project features, as well as providing timely reviews of various reports.

14.0 Termination Rights

The Parties can terminate this Agreement by written mutual agreement. Any Party can terminate this Agreement if the other Party(ies) materially breaches the Agreement, and the breaching Party(ies) does/do not cure within a reasonable time.

15.0 Dispute Resolution

If a dispute between any Parties cannot be settled through informal means, the Parties may first try in good faith to settle the dispute by non-binding mediation, before resorting to litigation. All claims will be resolved in accordance with Federal Law.

16.0 Phased Delivery

The Parties will endeavor to cooperate to reach mutual agreement on phased delivery of the LPOE Facilities. If the Parties reach agreement on phased delivery of the LPOE Facilities, this Agreement will be amended.

17.0 Representation, Commitment, Approval, Liability.

17.1 Federal Partners. Nothing in this Agreement, or any existing or future amendments to this Agreement, is to be construed as a commitment or representation by the Federal Partners to accept the LPOE, or to assume any liability for the level of toll revenue generated by the LPOE. Neither will Federal Partners' approvals in regard to design or construction be a waiver of Project Sponsors' or its contractors' or subcontractors' liabilities in regard to design or construction, or create any liability as to such by the Federal Partners. Federal Partners retain all rights to control operations and maintenance of, and staffing at the LPOE according to their operational need if accepted under the LPOE DAA.

17.2 Project Sponsors. The Project Sponsors will not be liable for failure to meet the goals set out in this Agreement as to Project Funds or to provide an unconditional gift of the Otay Mesa East LPOE, provided however that nothing in this section will undercut any warranties set out in this Agreement, the DAAs, or (to be) assigned to the Federal Partners, or the obligation of Project Sponsors to contribute available toll revenue to Project Funds under the terms of this Agreement.

General Provisions

18.0 Notices

18.1 Notices under the Agreement must be in writing and: (a) delivered personally; (b) sent by certified mail, with return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by email communication followed by a hard copy and with receipt confirmed by telephone.

18.2 Notices under Section 18.0 must be sent to the following addresses (or to such other address as may from time to time be specified in writing by such person):

- a) in the case of SANDAG to:
SANDAG
ATTN: Office of General Counsel
401 B Street, Suite 800
San Diego, CA 92101
- b) in the case of CALTRANS to:
Caltrans District 11
ATTN: Legal Department
4050 Taylor Street
San Diego, CA 92110
- c) in the case of GSA to:
U.S. General Services Administration
Region 9 Portfolio Management Director
50 United Nations Plaza, Mailbox 9
San Francisco, CA 94102

d) in the case of CBP to:

CBP/OFO/MSD/Fleet and Facilities Division Director1331
Pennsylvania Ave NW
Office 3.4A-5
Washington DC 20004

18.3 Notices will be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other person making the delivery, except notices received after 5:00 p.m. (Pacific Time) will be deemed received on the first Business Day following delivery.

19.0 Amendments. This Agreement may be amended, supplemented or restated by a written agreement signed by all Parties. No amendment, supplement, or restatement to or of this Agreement will have any force or effect unless it is in writing and signed by all Parties.

20.0 Survival. The provisions of this Agreement that require performance after the expiration or termination of this Agreement or that otherwise by their inherent character should survive expiration or termination of this Agreement will remain in force notwithstanding the expiration or termination of this Agreement.

21.0 No Assignment. Unless otherwise contemplated by the Agreement or previously approved by the Parties in writing, no Party may assign this Agreement or any of its rights, duties or obligations thereunder and any attempt by a Party to assign this Agreement or any of its rights, duties or obligations under this Agreement will be null and void.

22.0 No Rights of Third Parties. Nothing in this Agreement is intended or will be construed to confer or give any person or entity, other than the Parties and their respective successors, any rights or remedies under or by reason of this Agreement.

23.0 Third Party Liabilities. All liabilities of the Project Sponsors to third parties arising out of (a) the design or construction of the Project or (b) the Project Sponsor's administration, operation, maintenance, or improvement of the LPOE Ancillary Facilities will be satisfied by the Project Sponsors or by one or more third parties, other than the Federal Partners (except as otherwise specifically agreed by one or more of the Federal Partners in their sole discretion).

24.0 Confidentiality and Disclosure of Project Records

24.1 To the greatest extent allowable under Applicable Law, the Parties agree to maintain the confidentiality of all communications, documents, surveys, design and construction documents, site investigative reports or other materials directly or indirectly generated by the Parties in relation to the Project, including any documents produced or exchanged in relation to the dispute resolution process set forth in Section 15. Notwithstanding this paragraph, Federal Partners are allowed to share such confidential documents if requested by federal auditors or upon Congressional inquiries. To facilitate such confidentiality, the Sponsors agree to cause all consultants, advisors or contractors at whatever tier to execute a confidentiality and non-disclosure agreement in a form mutually agreeable to the Parties.

24.2 The Sponsors acknowledge and agree that communications, documents, surveys, design and construction documents, site investigative reports or other materials directly

or indirectly generated by the Parties in relation to the Project, including any documents produced or exchanged in relation to the dispute resolution process set forth in Section 15, may be considered Controlled Unclassified Information or Classified Information and will be handled by the Parties as set forth in the attached Handling of CUI and Confidential Information Agreement (Exhibit K).

24.3 The Parties acknowledge and agree that communications, documents, surveys, design and construction documents, site investigative reports or other materials directly or indirectly generated by the Parties in relation to the Project, including any documents produced or exchanged in relation to the dispute resolution process set forth in Section 15, may be considered public information subject to disclosure under Applicable Law, including the Freedom of Information Act and the California Public Records Act.

24.4 The Parties will timely inform the other Parties, in writing, of any public information disclosure requests that it receives for documents that another Party has identified as confidential and not subject to disclosure under Applicable Law, and provide the other Parties an opportunity to respond in writing. If the other Party requests, in writing, that the Party receiving the request not disclose the relevant information, the Party receiving the request will not disclose the information at issue, unless otherwise required by law. In the event of any proceeding or litigation concerning the non-disclosure of such information, the Party subject to the disclosure request will assert the defense(s)/exemption(s) proposed by the party disputing release, if deemed to be good faith arguments in accordance with law. The Party disputing the release of the information will cooperate in the defense of any action concerning such materials

25.0 Governing Law and Venue

25.1 Any dispute under this Agreement will be governed by, and construed and interpreted in accordance with, the federal law of the United States. Where federal law looks to local law, the laws of the State of California will be used. Notwithstanding the foregoing, nothing in this agreement constitutes a waiver of federal sovereign immunity.

25.2 Venue will be the applicable federal venue for the matter.

26.0 Authority and Enforceability

26.1 Additional Approvals. The Parties' funding obligations set forth in this Agreement are subject to receiving required approvals and authorizations (e.g., appropriations, financing, funding source approvals of eligible expenses).

26.2 Future Obligations. The Parties acknowledge that this Agreement is not a commitment by the Federal Government to future funding, staffing or other resources, nor is it a commitment to proceed with project execution activities. Nothing in this Agreement may be construed or interpreted to obligate the Federal Government to any current or future expenditure of funds in advance of, or more than, the availability of appropriations, nor does this Agreement obligate the Federal Government to spend funds for any particular purpose, even if funds are available.

26.3 Conflict with Law. Nothing in this Agreement is intended to conflict with current Applicable Law, regulation, directive, or policy of CBP, GSA, any other agency of the United States, the United States, or the State of California. If any provision of this Agreement is

inconsistent with any such authority, then that provision is deemed to be invalid and subject to modification upon concurrence of the Parties.

26.4 Severability. If any provision of this Agreement is determined to be illegal, invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by law and regulation and the Parties will negotiate in good faith to replace such provision with provisions that provide substantially the same rights and obligations for the Parties as the current provisions.

26.5 Waiver. The failure of any Party to insist in any one instance upon the strict performance by any other Party of its obligations under this Agreement will not constitute a waiver or relinquishment of any such obligations as to any other instances, and the same will continue in full force and effect. No covenant or condition of this Agreement may be waived by any Party except by written consent of that Party, and forbearance or indulgence of that Party in any regard whatsoever and no matter how long will not constitute a waiver of the covenant or condition until performed or waived in writing, and that Party will be entitled to invoke any remedy available to that Party under this Agreement or by Applicable Law, despite the forbearance or indulgence.

26.6 Entire Agreement. This Agreement, inclusive of the documents listed in Section 3.1, constitutes the entire agreement between the Parties in respect of the subject matter thereof and supersedes and revokes all previous, contrary negotiations, arrangements, letters of intent, term sheets, representations, memorandum of understandings, and information conveyed, whether oral or in writing, between the Parties or their representatives or any other Person purporting to represent one or more of the Parties.

27.0 Nondiscrimination. The Project Sponsors covenant for themselves, their successors and assigns and every successor-in-interest to the Property, or any part hereof, that the Project Sponsors and such successors and assigns will not discriminate on the basis of race, color, sex, religion, sexual orientation, or national origin in the performance of the Project.

28.0 No Member or Delegate of Congress or Resident Commissioner Part of Agreement. The provisions set forth at 18 U.S.C. § 431 (Contracts by Member of Congress) and 41 U.S.C. § 6306 (Prohibition on Members of Congress making contracts with Federal Government), as such provisions may be revised from time to time, are hereby incorporated in this Agreement by this reference, as if set forth in full.

29.0 Prohibition on ByteDance Covered Application (Jun 2023). Project Sponsors make the representation at Exhibit D regarding this prohibition.

30.0 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab Covered Entities. (Dec 2023). Project Sponsors will abide by the clause found at Exhibit E.

31.0 52.204-29 Federal Acquisition Supply Chain Security Act Orders—Representation and Disclosures (Dec 2023). Project Sponsors make the representations found at Exhibit F.

32.0 52.204-30 Federal Acquisition Supply Chain Security Act Orders—Prohibition (Dec 2023). Project Sponsors will abide by the clause found at Exhibit G.

33.0 52.240-1 Prohibition on Unmanned Aircraft Systems Manufactured or Assembled by American Security Drone Act-Covered Foreign Entities. Project Sponsors will abide by the clause found at Exhibit H.

34.0 For the purposes of this Agreement, Exhibits C through H are applicable to Project Sponsors as contractors to the Federal Partners, this Agreement as a contract, and to all of Sponsors' contracts and subcontracts.

35.0 Audit. Federal Partners reserve the right to audit the Project Funds accounts as Federal Partners may deem necessary, and Project Sponsors and their agents, employees and contractors will comply and cooperate in such audits.

36.0 Counterparts. This Agreement and any amendment, supplement, restatement, or termination of any provision of this Agreement may be executed and delivered in any number of identical counterparts, each of which when executed and delivered will be deemed to be an original, and all of which together will be deemed to be one and the same instrument when each Party has signed one such counterpart.

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year last written below, either on one original document or by multiple counterparts, which, when taken together, will constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE
FOLLOWS]

U.S. General Services Administration, acting
by and through the Administrator of General
Services and authorized representatives

By: _____
Elliot Doomes
Commissioner
Public Building Service

Date _____

U.S. Customs and Border Protection

By: _____
Pete Flores
Senior Official Performing the Duties
of the Commissioner

Date _____

California Department of Transportation

By: _____
Ann Fox
District Director
District 11

Date _____

San Diego Association of Governments

By: _____
Mario Orso
Chief Executive Officer

Date _____

Exhibit A

Flow of Funds

Exhibit A-1

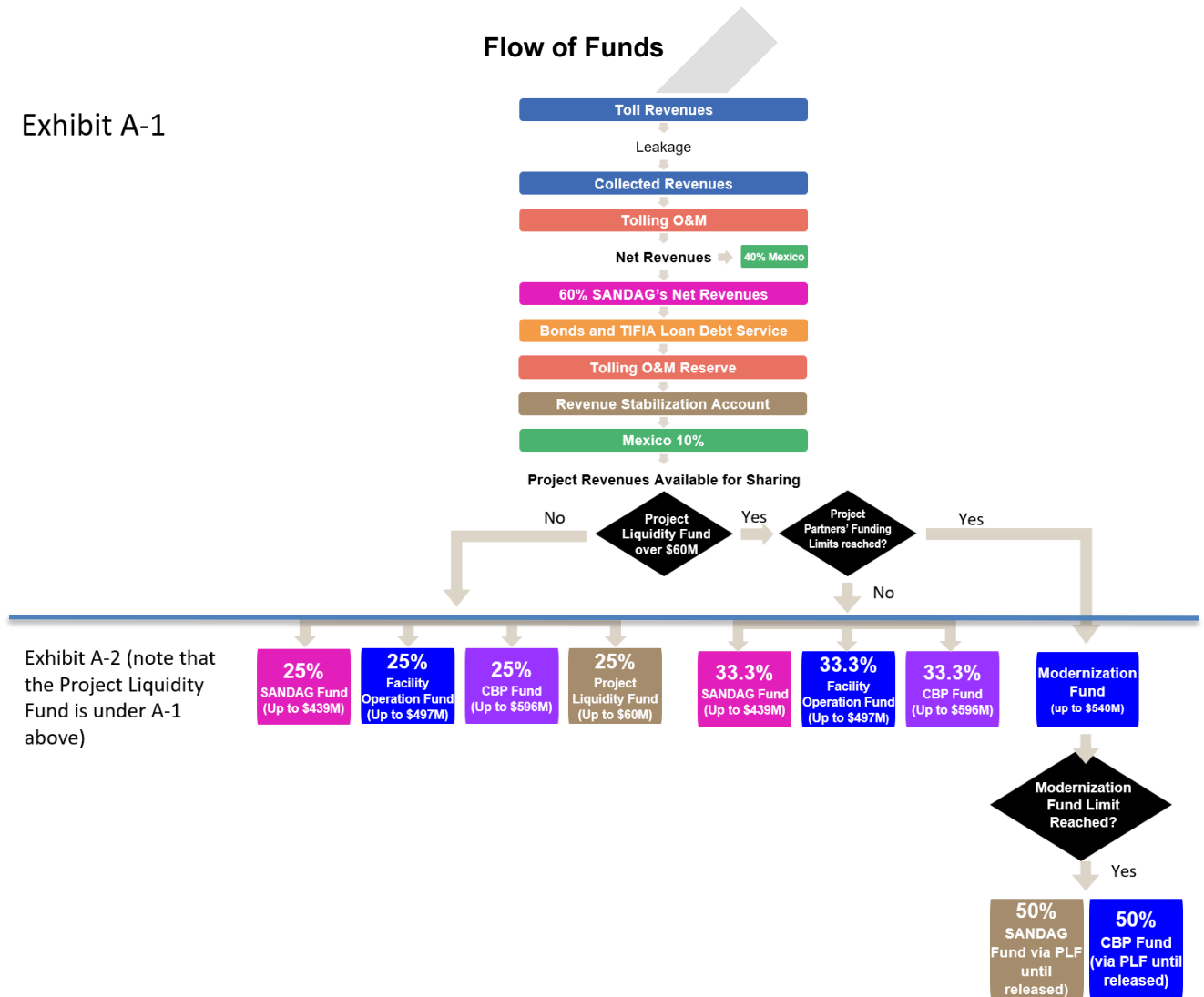


Exhibit B

Full Buildout Plan

NOT FOR PUBLIC RELEASE

EXHIBIT C

FAR 52.204-24 (d) Representation:

(d) Representation. The Offeror represents that—

(1) It ☐ will, ☐ will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds "will" in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that—

It ☐ does, ☐ does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds "does" in paragraph (d)(2) of this section.

EXHIBIT D

Prohibition on a ByteDance Covered Application (Jun 2023)

(a) Definitions. As used in this clause—

Covered application means the social networking service TikTok or any successor application or service developed or provided by ByteDance Limited or an entity owned by ByteDance Limited.

Information technology, as defined in 40 U.S.C. 11101(6)—

(1) Means any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency that requires the use—

(i) Of that equipment; or

(ii) Of that equipment to a significant extent in the performance of a service or the furnishing of a product;

(2) Includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; but

(3) Does not include any equipment acquired by a Federal contractor incidental to a Federal contract.

(b) Prohibition. Section 102 of Division R of the Consolidated Appropriations Act, 2023 (Pub. L. 117-328), the No TikTok on Government Devices Act, and its implementing guidance under Office of Management and Budget (OMB) Memorandum M-23-13, dated February 27, 2023, “No TikTok on Government Devices” Implementation Guidance, collectively prohibit the presence or use of a covered application on executive agency information technology, including certain equipment used by Federal contractors. The Contractor is prohibited from having or using a covered application on any information technology owned or managed by the Government, or on any information technology used or provided by the Contractor under this contract, including equipment provided by the Contractor’s employees; however, this prohibition does not apply if the Contracting Officer provides written notification to the Contractor that an exception has been granted in accordance with OMB Memorandum M-23-13.

(c) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for the acquisition of commercial products or commercial services.

EXHIBIT E

Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab Covered Entities. (Dec 2023)

(a) Definitions. As used in this clause—

Kaspersky Lab covered article means any hardware, software, or service that—

- (1) Is developed or provided by a Kaspersky Lab covered entity;
- (2) Includes any hardware, software, or service developed or provided in whole or in part by a Kaspersky Lab covered entity; or
- (3) Contains components using any hardware or software developed in whole or in part by a Kaspersky Lab covered entity.

Kaspersky Lab covered entity means—

- (1) Kaspersky Lab;
- (2) Any successor entity to Kaspersky Lab, including any change in name, e.g., “Kaspersky”;
- (3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or
- (4) Any entity of which Kaspersky Lab has a majority ownership.

(b) Prohibition. Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) prohibits Government use of any Kaspersky Lab covered article. The Contractor is prohibited from—

- (1) Providing any Kaspersky Lab covered article that the Government will use on or after October 1, 2018; and
- (2) Using any Kaspersky Lab covered article on or after October 1, 2018, in the development of data or deliverables first produced in the performance of the contract.

(c) Reporting requirement.

(1) In the event the Contractor identifies a Kaspersky Lab covered article provided to the Government during contract performance, or the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall report, in writing, to the Contracting Officer or, in the case of the Department of Defense, to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (c)(1) of this clause:

(i) Within 3 business days from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the report pursuant to paragraph (c)(1) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a Kaspersky Lab covered article, any reasons that led to the use or submission of the Kaspersky Lab covered article, and any additional efforts that will be incorporated to prevent future use or submission of Kaspersky Lab covered articles.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts including subcontracts for the acquisition of commercial products or commercial services.

EXHIBIT F

Federal Acquisition Supply Chain Security Act Orders—Representation and Disclosures (Dec 2023)

- (a) Definitions. As used in this provision, Covered article, FASCSA order, Intelligence community, National security system, Reasonable inquiry, Sensitive compartmented information, Sensitive compartmented information system, and Source have the meaning provided in the clause 52.204-30, Federal Acquisition Supply Chain Security Act Orders—Prohibition.
- (b) Prohibition. Contractors are prohibited from providing or using as part of the performance of the contract any covered article, or any products or services produced or provided by a source, if the prohibition is set out in an applicable Federal Acquisition Supply Chain Security Act (FASCSA) order, as described in paragraph (b)(1) of FAR 52.204-30, Federal Acquisition Supply Chain Security Act Orders—Prohibition.
- (c) Procedures. (1) The Offeror shall search for the phrase “FASCSA order” in the System for Award Management (SAM)(<https://www.sam.gov>) for any covered article, or any products or services produced or provided by a source, if there is an applicable FASCSA order described in paragraph (b)(1) of FAR 52.204-30, Federal Acquisition Supply Chain Security Act Orders—Prohibition.
- (2) The Offeror shall review the solicitation for any FASCSA orders that are not in SAM, but are effective and do apply to the solicitation and resultant contract (see FAR 4.2303(c)(2)).
- (3) FASCSA orders issued after the date of solicitation do not apply unless added by an amendment to the solicitation.
- (d) Representation. By submission of this offer, the offeror represents that it has conducted a reasonable inquiry, and that the offeror does not propose to provide or use in response to this solicitation any covered article, or any products or services produced or provided by a source, if the covered article or the source is prohibited by an applicable FASCSA order in effect on the date the solicitation was issued, except as waived by the solicitation, or as disclosed in paragraph (e).
- (e) Disclosures. The purpose for this disclosure is so the Government may decide whether to issue a waiver. For any covered article, or any products or services produced or provided by a source, if the covered article or the source is subject to an applicable FASCSA order, and the Offeror is unable to represent compliance, then the Offeror shall provide the following information as part of the offer:
- (1) Name of the product or service provided to the Government;
 - (2) Name of the covered article or source subject to a FASCSA order;
 - (3) If applicable, name of the vendor, including the Commercial and Government Entity code and unique entity identifier (if known), that supplied the covered article or the product or service to the Offeror;
 - (4) Brand;

(5) Model number (original equipment manufacturer number, manufacturer part number, or wholesaler number);

(6) Item description;

(7) Reason why the applicable covered article or the product or service is being provided or used;

(f) Executive agency review of disclosures. The contracting officer will review disclosures provided in paragraph (e) to determine if any waiver may be sought. A contracting officer may choose not to pursue a waiver for covered articles or sources otherwise subject to a FASCSA order and may instead make an award to an offeror that does not require a waiver.

(End of provision)

EXHIBIT G

Federal Acquisition Supply Chain Security Act Orders—Prohibition (Dec 2023)

(a) Definitions. As used in this clause—

Covered article, as defined in 41 U.S.C. 4713(k), means—

- (1) Information technology, as defined in 40 U.S.C. 11101, including cloud computing services of all types;
- (2) Telecommunications equipment or telecommunications service, as those terms are defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);
- (3) The processing of information on a Federal or non-Federal information system, subject to the requirements of the Controlled Unclassified Information program (see 32 CFR part 2002); or
- (4) Hardware, systems, devices, software, or services that include embedded or incidental information technology.

FASCSA order means any of the following orders issued under the Federal Acquisition Supply Chain Security Act (FASCSA) requiring the removal of covered articles from executive agency information systems or the exclusion of one or more named sources or named covered articles from executive agency procurement actions, as described in 41 CFR 201–1.303(d) and (e):

- (1) The Secretary of Homeland Security may issue FASCSA orders applicable to civilian agencies, to the extent not covered by paragraph (2) or (3) of this definition. This type of FASCSA order may be referred to as a Department of Homeland Security (DHS) FASCSA order.
- (2) The Secretary of Defense may issue FASCSA orders applicable to the Department of Defense (DoD) and national security systems other than sensitive compartmented information systems. This type of FASCSA order may be referred to as a DoD FASCSA order.
- (3) The Director of National Intelligence (DNI) may issue FASCSA orders applicable to the intelligence community and sensitive compartmented information systems, to the extent not covered by paragraph (2) of this definition. This type of FASCSA order may be referred to as a DNI FASCSA order.

Intelligence community, as defined by 50 U.S.C. 3003(4), means the following—

- (1) The Office of the Director of National Intelligence;
- (2) The Central Intelligence Agency;
- (3) The National Security Agency;

- (4) The Defense Intelligence Agency;
- (5) The National Geospatial-Intelligence Agency;
- (6) The National Reconnaissance Office;
- (7) Other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs;
- (8) The intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Federal Bureau of Investigation, the Drug Enforcement Administration, and the Department of Energy;
- (9) The Bureau of Intelligence and Research of the Department of State;
- (10) The Office of Intelligence and Analysis of the Department of the Treasury;
- (11) The Office of Intelligence and Analysis of the Department of Homeland Security; or
- (12) Such other elements of any department or agency as may be designated by the President, or designated jointly by the Director of National Intelligence and the head of the department or agency concerned, as an element of the intelligence community.

National security system, as defined in 44 U.S.C. 3552, means any information system (including any telecommunications system) used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency—

- (1) The function, operation, or use of which involves intelligence activities; involves cryptologic activities related to national security; involves command and control of military forces; involves equipment that is an integral part of a weapon or weapons system; or is critical to the direct fulfillment of military or intelligence missions, but does not include a system that is to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications); or
- (2) Is protected at all times by procedures established for information that have been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept classified in the interest of national defense or foreign policy.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of any covered articles, or any products or services produced or provided by a source. This applies when the covered article or the source is subject to an applicable FASCSA order. A reasonable inquiry excludes the need to include an internal or third-party audit.

Sensitive compartmented information means classified information concerning or derived from intelligence sources, methods, or analytical processes, which is required to be handled within formal access control systems established by the Director of National Intelligence.

Sensitive compartmented information system means a national security system authorized to process or store sensitive compartmented information.

Source means a non-Federal supplier, or potential supplier, of products or services, at any tier.

(b) Prohibition. (1) Unless an applicable waiver has been issued by the issuing official, Contractors shall not provide or use as part of the performance of the contract any covered article, or any products or services produced or provided by a source, if the covered article or the source is prohibited by an applicable FASCSA orders as follows:

(i) For solicitations and contracts awarded by a Department of Defense contracting office, DoD FASCSA orders apply.

(ii) For all other solicitations and contracts DHS FASCSA orders apply.

(2) The Contractor shall search for the phrase “FASCSA order” in the System for Award Management (SAM) at <https://www.sam.gov> to locate applicable FASCSA orders identified in paragraph (b)(1).

(3) The Government may identify in the solicitation additional FASCSA orders that are not in SAM, which are effective and apply to the solicitation and resultant contract.

(4) A FASCSA order issued after the date of solicitation applies to this contract only if added by an amendment to the solicitation or modification to the contract (see FAR 4.2304(c)). However, see paragraph (c) of this clause.

(5) (i) If the contractor wishes to ask for a waiver of the requirements of a new FASCSA order being applied through modification, then the Contractor shall disclose the following:

(A) Name of the product or service provided to the Government;

(B) Name of the covered article or source subject to a FASCSA order;

(C) If applicable, name of the vendor, including the Commercial and Government Entity code and unique entity identifier (if known), that supplied or supplies the covered article or the product or service to the Offeror;

(D) Brand;

(E) Model number (original equipment manufacturer number, manufacturer part number, or wholesaler number);

(F) Item description;

(G) Reason why the applicable covered article or the product or service is being provided or used;

(ii) Executive agency review of disclosures. The contracting officer will review disclosures provided in paragraph (b)(5)(i) to determine if any waiver is warranted. A contracting officer may choose not to pursue a waiver for covered articles or sources otherwise covered by a FASCSA order and to instead pursue other appropriate action.

(c) Notice and reporting requirement. (1) During contract performance, the Contractor shall review SAM.gov at least once every three months, or as advised by the Contracting Officer, to check for covered articles subject to FASCSA order(s), or for products or services produced by a source subject to FASCSA order(s) not currently identified under paragraph (b) of this clause.

(2) If the Contractor identifies a new FASCSA order(s) that could impact their supply chain, then the Contractor shall conduct a reasonable inquiry to identify whether a covered article or product or service produced or provided by a source subject to the FASCSA order(s) was provided to the Government or used during contract performance.

(3) (i) The Contractor shall submit a report to the contracting office as identified in paragraph (c)(3)(ii) of this clause, if the Contractor identifies, including through any notification by a subcontractor at any tier, that a covered article or product or service produced or provided by a source was provided to the Government or used during contract performance and is subject to a FASCSA order(s) identified in paragraph (b) of this clause, or a new FASCSA order identified in paragraph (c)(2) of this clause. For indefinite delivery contracts, the Contractor shall report to both the contracting office for the indefinite delivery contract and the contracting office for any affected order.

(ii) If a report is required to be submitted to a contracting office under (c)(3)(i) of this clause, the Contractor shall submit the report as follows:

(A) If a Department of Defense contracting office, the Contractor shall report to the website at <https://dibnet.dod.mil>.

(B) For all other contracting offices, the Contractor shall report to the Contracting Officer.

(4) The Contractor shall report the following information for each covered article or each product or service produced or provided by a source, where the covered article or source is subject to a FASCSA order, pursuant to paragraph (c)(3)(i) of this clause:

(i) Within 3 business days from the date of such identification or notification:

(A) Contract number;

(B) Order number(s), if applicable;

(C) Name of the product or service provided to the Government or used during performance of the contract;

(D) Name of the covered article or source subject to a FASCSA order;

(E) If applicable, name of the vendor, including the Commercial and Government Entity code and unique entity identifier (if known), that supplied the covered article or the product or service to the Contractor;

(F) Brand;

(G) Model number (original equipment manufacturer number, manufacturer part number, or wholesaler number);

(H) Item description; and

(I) Any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (c)(4)(i) of this clause:

(A) Any further available information about mitigation actions undertaken or recommended.

(B) In addition, the Contractor shall describe the efforts it undertook to prevent submission or use of the covered article or the product or service produced or provided by a source subject to an applicable FASCSA order, and any additional efforts that will be incorporated to prevent future submission or use of the covered article or the product or service produced or provided by a source that is subject to an applicable FASCSA order.

(d) Removal. For Federal Supply Schedules, Governmentwide acquisition contracts, multi-agency contracts or any other procurement instrument intended for use by multiple agencies, upon notification from the Contracting Officer, during the performance of the contract, the Contractor shall promptly make any necessary changes or modifications to remove any product or service produced or provided by a source that is subject to an applicable FASCSA order.

(e) Subcontracts. (1) The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (c)(1) of this clause, in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products and commercial services.

(2) The Government may identify in the solicitation additional FASCSA orders that are not in SAM, which are effective and apply to the contract and any subcontracts and other contractual instruments under the contract. The Contractor or higher-tier subcontractor shall notify their subcontractors, and suppliers under other contractual instruments, that the FASCSA orders in the solicitation that are not in SAM apply to the contract and all subcontracts.

(End of clause)

Alternate I (Dec 2023). As prescribed in 4.2306(c), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic clause:

(b) Prohibition. (1) Contractors are prohibited from providing or using as part of the performance of the contract any covered article, or any products or services produced or provided by a source, if the covered article or the source is prohibited by any applicable FASCSA orders identified by the checkbox(es) in this paragraph (b)(1).

[Contracting Officer must select either “yes” or “no” for each of the following types of FASCSA orders:]

Yes ☐ No ☐ DHS FASCSA Order

Yes ☐ No ☐ DoD FASCSA Order

Yes ☐ No ☐ DNI FASCSA Order

Alternate II (Dec 2023). As prescribed in 4.2306(c)(2)(ii), substitute the following paragraph (b) in place of paragraph (b) of the basic clause. This clause applies to each order as identified by the Contracting Officer.

(b) Prohibition. (1) Contractors are prohibited from providing or using as part of the performance of the contract any covered article, or any products or services produced or provided by a source, if the covered article or the source is prohibited by any applicable FASCSA orders identified by the checkbox(es) in this paragraph (b)(1).

[Contracting Officer must select either “yes” or “no” for each of the following types of FASCSA orders:]

Yes ☐ No ☐ DHS FASCSA order

Yes ☐ No ☐ DoD FASCSA order

Yes ☐ No ☐ DNI FASCSA order

(2) The Contractor shall search for the phrase “FASCSA order” in the System for Award Management (SAM) at <https://www.sam.gov> to locate applicable FASCSA orders identified in paragraph (b)(1) of this clause.

(3) The Government may identify in the request for quotation (RFQ) or in the notice of intent to place an order additional FASCSA orders that are not in SAM, but are effective and apply to the order.

(4) A FASCSA order issued after the date of the RFQ or the notice of intent to place an order applies to this contract only if added by an amendment to the RFQ or in the notice of intent to place an order or added by modification to the order (see FAR 4.2304(c)). However, see paragraph (c) of this clause.

(5)(i) If the contractor wishes to ask for a waiver, the Contractor shall disclose the following:

(A) Name of the product or service provided to the Government;

(B) Name of the covered article or source subject to a FASCSA order;

(C) If applicable, name of the vendor, including the Commercial and Government Entity code and unique entity identifier (if known), that supplied the covered article or the product or service to the Offeror;

(D) Brand;

(E) Model number (original equipment manufacturer number, manufacturer part number, or wholesaler number);

(F) Item description;

(G) Reason why the applicable covered article or the product or service is being provided or used;

(ii) Executive agency review of disclosures. The contracting officer will review disclosures provided in paragraph (b)(5)(i) of this clause to determine if any waiver may be sought. A contracting officer may choose not to pursue a waiver for covered articles or sources otherwise covered by a FASCSA order and may instead make award to an offeror that does not require a waiver.

EXHIBIT H

52.240-1 Prohibition on Unmanned Aircraft Systems Manufactured or Assembled by American Security Drone Act-Covered Foreign Entities.

(a) Definitions. As used in this clause—

American Security Drone Act-covered foreign entity means an entity included on a list developed and maintained by the Federal Acquisition Security Council (FASC) and published in the System for Award Management (SAM) at <https://www.sam.gov> (section 1822 of the National Defense Authorization Act for Fiscal Year 2024, Pub. L. 118-31, 41 U.S.C. 3901 note prec.).

FASC-prohibited unmanned aircraft system means an unmanned aircraft system manufactured or assembled by an American Security Drone Act-covered foreign entity.

Unmanned aircraft means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft (49 U.S.C. 44801(11)).

Unmanned aircraft system means an unmanned aircraft and associated elements (including communication links and the components that control the unmanned aircraft) that are required for the operator to operate safely and efficiently in the national airspace system (49 U.S.C. 44801(12)).

(b) Prohibition. The Contractor is prohibited from—

(1) Delivering any FASC-prohibited unmanned aircraft system, which includes unmanned aircraft (i.e., drones) and associated elements (sections 1823 and 1826 of Pub. L. 118-31, 41 U.S.C. 3901 note prec.);

(2) On or after December 22, 2025, operating a FASC-prohibited unmanned aircraft system in the performance of the contract (section 1824 of Pub. L. 118-31, 41 U.S.C. 3901 note prec.); and

(3) On or after December 22, 2025, using Federal funds for the procurement or operation of a FASC-prohibited unmanned aircraft system (section 1825 of Pub. L. 118-31, 41 U.S.C. 3901 note prec.).

(c) Procedures. The Contractor shall search SAM at <https://www.sam.gov> for the FASC-maintained list of American Security Drone Act-covered foreign entities prior to proposing, or using in performance of the contract, any unmanned aircraft system. Additionally, the Contractor shall ensure any effort or expenditure associated with a FASC-prohibited unmanned aircraft system is consistent with a corresponding exemption, exception, or waiver determination expressly stated in the contract.

(d) Exemptions, exceptions, and waivers. The prohibitions in this clause do not apply where the agency has determined an exemption, exception, or waiver applies and the contract indicates that such a determination has been made. [See sections 1823 through 1825 and 1832 of Public Law 118-31 (41 U.S.C. 3901 note prec.) for statutory requirements pertaining to exemptions, exceptions, and waivers.].

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services.

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**EXHIBIT I
FUND REQUEST FORM
[TO BE ADDED VIA FUTURE AMENDMENT]**

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EXHIBIT J
PROJECT FUND DONATIONS ACCEPTANCE AGREEMENT
[TO BE ADDED VIA FUTURE AMENDMENT]

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EXHIBIT K
HANDLING OF CUI AND CONFIDENTIAL INFORMATION AGREEMENT

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GSA Controlled Unclassified Information (CUI) Program Guide



(Although GSA implemented our CUI program, other agencies are moving to CUI at different paces. If we receive CUI marked with Legacy Markings (SBU, FOUO, OUO, Confidential, etc.) from an organization then use necessary protections and policies to safeguard according to the law, regulation, or government-wide policy that covers that as protected information.)

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Purpose

GSA's CUI policy and this CUI Guide implement [Executive Order 13556, Controlled Unclassified Information \(CUI\)](#), the requirements of [32 CFR 2002](#), and establish policy and framework for the CUI Program at GSA. CUI is defined as unclassified information that requires safeguarding and dissemination controls pursuant to law, regulation, or Government-wide policy, as listed in the [CUI Registry](#). The CUI Program and the CUI Registry are managed by the CUI Executive Agent (EA), the Information Security Oversight Office (ISOO) within the National Archives and Records Administration (NARA).

The CUI Program is designed to address several deficiencies in managing and protecting unclassified information, including inconsistent markings, inadequate safeguarding, and needless restrictions, by standardizing procedures and providing common definitions through a CUI Registry.

This Guide sets forth the framework for incorporating CUI requirements into GSA's processes for handling unclassified information that requires safeguarding and dissemination controls as required by law, regulation, and Government-wide policy. It furthers [GSA Order CIO 2103 Controlled Unclassified Information \(CUI\) Policy](#) by providing specific details concerning the implementation, operation, and maintenance of the CUI Program at GSA. This Guide does not apply to uncontrolled unclassified information or to classified information.

Background

Executive Order 13556 *Controlled Unclassified Information* establishes an open and uniform program to standardize the way executive branch agencies handle information that requires protection but is not classified. In the past, this information was not handled nor marked consistently by all executive branch agencies, and there was no Government-wide direction on what information should be protected. The CUI Program reduces confusion by establishing uniformity across the executive branch in how sensitive information that is not classified will be identified, marked, accessed, disseminated, safeguarded, decontrolled, and destroyed.

Under the CUI Program, the only types of information that may be marked and handled as CUI are those identified in the CUI Registry and covered by applicable laws, regulations or Government-wide policies. The CUI Program regulates the type of information that can and should be protected as shown in the CUI Registry. The CUI Program also incorporates a process that all executive branch agencies will utilize to protect and share sensitive information.

Part 2002 of Title 32 of the Code of Federal Regulations (CFR) defines how the CUI Program will be implemented in the executive branch. The CUI Executive Agent (EA) has established a CUI Registry at archives.gov/cui that serves as the authoritative reference for all CUI categories, authorities, markings, and other information.

Implementation

GSA began implementation on July 1, 2021. Throughout the implementation period, legacy markings and associated safeguarding practices will exist at the same time in all agencies. As this transition progresses, legacy markings and associated safeguarding practices will be phased out.

Responsibilities

CUI responsibilities for specific positions and organizations are defined in CIO 2103 GSA CUI Policy. Anyone working for or with GSA must be aware of required CUI protections and complete all mandatory training in GSA Online University (OLU).

The CUI Registry

The CUI Registry serves as the Government-wide central repository for all information, guidance, policy, and requirements on handling CUI, including authorized CUI categories, associated markings, handling, and decontrolling procedures.

Existing policies for managing unclassified information that is sensitive (e.g., Sensitive But Unclassified (SBU), For Official Use Only (FOUO), Personally Identifiable Information (PII), etc.) remain in effect. See “Sending and Receiving CUI During the Implementation Process” later in this Guide for dealing with other agencies who are at different stages of CUI Program implementation.

- National Archives and Records Administration (NARA), the CUI EA, maintains the CUI Registry and the associated website, archives.gov/cui.
- The CUI categories explain the types of information for which laws, regulations, or Government-wide policies require or permit agencies to exercise safeguarding or dissemination controls, and which the CUI EA has approved and listed in the CUI Registry and shall serve as exclusive designations for identifying CUI.
- All unclassified information that qualifies as CUI must be handled within the parameters of the CUI Program and marked appropriately per the CUI Registry.
- Only items that fall under the purview of the CUI Registry may be marked as CUI. Items can only be marked according to CUI Markings identified in the CUI Registry.
- The CUI Registry includes citations to laws, regulations, or Government-wide policies that form the basis for each category and notes any sanctions or penalties for misuse of each category. No uncontrolled unclassified information may be labeled as CUI. If there is a need to add a CUI category to the CUI Registry, there must be a corresponding authority that says the item will and should be protected. Contact the GSA CUI Team at cui@gsa.gov for assistance.

Identifying CUI

- CUI is information the Government creates or possesses that a law, regulation, or Government-wide policy requires or specifically permits an agency to handle by means of safeguarding or dissemination controls. CUI also includes data created by contractors operating Federal Information Systems on behalf of the Government. A Federal Information System is defined in GSA Order CIO 2100 IT Security Policy as “an information system used or operated by an executive agency, by a contractor of an executive agency, or by another organization on behalf of an executive agency”. A GSA information system is an example of a federal information system.
- Examples of sensitive or protected information that are now being replaced by CUI markings and will no longer be allowed once CUI is fully implemented, include Sensitive But Unclassified (SBU), Private, For Official Use Only (FOUO), and other less common markings that may be in use. Personally Identifiable Information (PII), now a subset of CUI, may still be referred to as PII in accordance with the Privacy Act.
- For a complete listing of CUI Categories, refer to the CUI Registry at archives.gov/cui. For a subset of CUI Categories that GSA is likely to use see the InSite page insite.gsa.gov/cui.
- The authorized holder makes the determination as to whether information is CUI. Those owners who create and manage such data must be familiar with the CUI categories and CUI policies, complete all training, and know how to determine what information is CUI and how it should be handled. They will determine the type of CUI (Basic or Specified -- see [Safeguarding Standards](#) below, and [Appendix B - Definitions](#)), the applicable category, and the necessary markings and decontrol actions required based on the specifics within this Guide and the applicable authority. See the list of [Categories likely used by GSA with associated markings](#).
- [PBS 3490 Security for Sensitive Building Information Related to Federal Buildings, Grounds, or Property](#) governs handling of sensitive information specifically focused on sensitive building information. The terminology within that policy should be consulted, along with the GSA CUI Policy and this Guide, when dealing with sensitive building information that must be protected. The CUI category for this information will be [Physical Security](#) as found in the CUI Registry.
- The GSA CUI Program does not apply to classified information, which is governed by Executive Order 13526, Classified National Security Information. No classified information may be controlled within the CUI Program.

Types of CUI

CUI Basic is the subset of CUI for which the authorizing law, regulation, or Government-wide

policy does not have any specific handling or dissemination requirements. CUI Basic is handled according to the uniform set of controls set forth in the CFR and the CUI Registry.

CUI Specified is different in that the authorizing law, regulation, or Government-wide policy contains specific handling controls that differ from those for CUI Basic. The CUI Registry indicates which authorities include such specific requirements. CUI Specified controls may be more stringent than, or may simply differ from, those required by CUI Basic. **CUI Specified is NOT a “higher level” of CUI, it is simply different.** Since CUI Specified is based upon a law, federal regulation, or Government-wide policy, this form of CUI cannot be legally ignored or overlooked.

Summary:

CUI Basic	CUI Specified
<i>Sensitive information with no additional or different requirements mentioned in the underlying authorities. CUI Basic does not provide any specific guidance. Most CUI will be Basic.</i>	<i>Sensitive information whose underlying authority has specified something different or extra is required for that type of information (e.g., limited distribution, additional protections, etc.). Not a higher level of CUI, just different.</i>
<i>Authorized users need to understand which authority applies to their specific information. That authority, shown in the CUI Registry Category List, will say if the information is CUI Basic or CUI Specified.</i>	

Safeguarding CUI

General Safeguarding Policy.

- CUI, regardless of its form, shall be protected in a manner that minimizes the risk of unauthorized disclosure while allowing for access by authorized holders. Persons working with CUI shall be careful not to expose CUI to unauthorized users or others who do not have a lawful government purpose to see it. Cover sheets may be placed on top of

- documents to conceal their contents from casual viewing. Personnel may use cover sheets to protect CUI documents while in use, but must secure CUI documents in a locked location, such as a desk drawer or file cabinet, when not in use or under observation.
- Authorized holders of CUI are responsible for complying with applicable safeguarding requirements in accordance with 32 CFR 2002, this Guide, and all applicable guidance published in the CUI Registry.
- All sensitive information should be protected even if the markings are incorrect or missing. Due to varied time spans of agencies transitioning from legacy markings to CUI, some sensitive information may not be marked properly, or may not be marked at all. This information should still be treated and safeguarded as CUI. Anyone finding an incorrectly marked document should notify the disseminating individual or agency and request a properly marked document or have them confirm that it is not CUI.
- For categories specifically designated as CUI Specified, individuals must follow the procedures in the underlying laws, regulations, or Government-wide policies that established the specific category involved. Only categories designated in the CUI Registry as CUI Specified may impose more stringent safeguarding measures. This information is available in the CUI Registry.

Safeguarding Practices.

- Only authorized holders shall have access to CUI. An authorized holder is a person or entity that handles GSA's CUI, has completed the required CUI training, and has authorization from GSA management to designate or handle CUI.
- CUI in printed copy must be kept under direct control of an authorized holder, and protected by at least one physical barrier (e.g., a locked door or drawer) whenever it is left unattended. Even where the facility/building is secure, CUI must not be left unattended in open spaces.
- All CUI must be protected from access, overhearing, or observation by unauthorized persons. In GSA's open office environments CUI holders should be aware of CUI being viewed on a computer screen and should find a private area for CUI-related discussions. A CUI cover sheet may be used to protect printed material while in use, but CUI documents must be secured in a locked location when not in use or under observation.
- When outside a GSA building or other controlled environment, personnel must always keep CUI under their direct control and protect it with at least one physical barrier to prevent the CUI from unauthorized access or observation. CUI shall not be viewed while on public transportation or open areas where others may be exposed to it. In hotel rooms, CUI should be kept in a locked briefcase or room safe. While not a good practice, CUI

could be stored in a locked automobile, if necessary, but only if it is in an envelope, briefcase, or otherwise covered from view, and best locked in the trunk if available.

- Reproduction of CUI (copying, faxing, scanning, printing, electronic duplication) is allowed if it is in furtherance of a Lawful Government Purpose where the recipient has a need to receive/view/handle it (as determined by the authorized holder), and if all GSA and CUI policies and handling protections are followed.
- Electronic CUI shall only be stored in properly encrypted systems (e.g., database, email, network drive, website, segregated and protected electronic storage device) categorized at the minimum FISMA Moderate level. See below under “Safeguarding CUI in Federal and Nonfederal IT Systems” for more details.
- The GSA Google Cloud Platform workspace is an authorized IT system/application. CUI may be stored on Google Drive and discussed via Google Meet provided there is limited access to the file/drive or meeting to only those with a Lawful Government Purpose. Gmail may be used to transmit CUI within GSA’s network. CUI must be encrypted if going outside a gsa.gov email address. See the Email section below for details.
- Authorized holders must make the determination that all persons involved in CUI discussions or meetings are authorized to know about CUI before using voicemail systems, messaging or chat functions, telepresence systems, video conferencing, or any other electronic means of sharing.
- When transporting CUI to and from an alternate work location, the information must be protected (See the [Methods of Disseminating CUI](#) section of this Guide).
- Refer to IT Security Procedural Guide Media Protection [CIO IT Security 06-32] for details on protection of and controlling access to digital and hardcopy information, and sanitization of media prior to disposal or reuse. [IT Procedural Guides can be found on InSite.](#)

Safeguarding CUI in Federal and Nonfederal IT Systems.

- See the [Definitions](#) section for an explanation of Federal and Nonfederal Systems.
- CUI is categorized at the moderate confidentiality impact value in accordance with Federal Information Processing Standard 199, Standards for Security (FIPS Publication 199). Systems that include CUI must incorporate the requirement to safeguard CUI at the moderate confidentiality impact value into their design and management actions. GSA may increase the confidentiality impact value above moderate and apply additional security requirements and controls *only internally* and may not require anyone outside the agency to maintain the higher impact value or more stringent security requirements/controls.

- All applicable GSA policies apply when CUI is held within an IT system. Additional guidance can be found in [CIO-IT Security Procedural Guides](#). The guides provide more detailed information on how to implement security processes and controls and provide worksheets and forms to meet reporting requirements. The guides are updated as needed to reflect the latest regulations and technologies.
- All applicable Government-wide standards and guidelines issued by the National Institute of Standards and Technology (NIST), and applicable policies established by the Office of Management and Budget (OMB) apply (see [FIPS Publication 199](#), [FIPS Publication 200](#), and [NIST SP 800-53](#)).
- Electronic CUI shall only be stored in a password protected system (e.g., database, email, network drive, segregated and protected electronic storage device). CUI indicators must be present to alert users of the presence of CUI within the system. A warning must be shown on the login screen or via a screen after logging in, and optionally in headers that appear on each page displayed. Additionally, any printouts generated from an application must have the CUI banner on every page of the printout. If these are not printed by the application, the user must write the banner on every page that is printed or request a Limited Marking Waiver if marking every page is excessively burdensome.
- The following text must be used as a splash screen for any IT system containing CUI:

WARNING

This is an AGENCY Federal Government computer system that is "FOR OFFICIAL USE ONLY." This system is subject to monitoring. Therefore, no expectation of privacy is to be assumed. Use of this system indicates consent to monitoring and recording. Individuals found performing unauthorized activities may be subject to disciplinary action including criminal prosecution.

This system contains Controlled Unclassified Information (CUI). All individuals viewing, reproducing or disposing of this information are required to protect it in accordance with 32 CFR Part 2002 and GSA Order CIO 2103.2 CUI Policy.

For additional information: [***contact information or website where users can get help***]

(The first section of the splash screen text above is required, as written, by CIO 2100.1 IT Security Policy. The second section is GSA's terminology to be used to meet the requirements of 32 CFR 2002 and NIST SP 800-53. The third section is optional but helpful for users in case they need assistance.)

- CUI shall not be processed on personally owned electronic devices unless connected through an approved GSA system with approved controls in place. CUI shall not be stored on personally owned electronic devices.

- CUI shall not be sent to or from personal email accounts.
- CUI shall not be posted on or processed through any external or non-agency approved websites or portals (internet kiosks, social media sites, blogs, etc.).
- [NIST SP 800-171](#), “Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations”, addresses the elements necessary to protect CUI on nonfederal information systems in accordance with the requirements of 32 CFR 2002.

Marking CUI

General.

- All CUI documents must be marked and protected according to applicable laws, regulations, and Government-wide policies. CUI markings listed in the CUI Registry are the only markings authorized to designate unclassified information requiring safeguarding or dissemination controls.
- Authorized holders of CUI will be held accountable for knowing and following these procedures as described in the mandatory training and in this Guide. Authorized holders may determine what information qualifies for CUI status and apply the appropriate CUI markings when the information is designated as CUI.
- CUI markings must not be used to conceal illegality, negligence, ineptitude, or other disreputable circumstances embarrassing to any individual, any agency, the Federal Government, or any of their partners, or for any purpose other than to adhere to the law, regulation or Government-wide policy authorizing the control.
- Anyone finding an incorrectly marked document should notify the disseminating individual or agency and request a properly marked document or have them confirm that it is not CUI. The lack of CUI markings on information that qualifies as CUI does not exempt the authorized holder from abiding by applicable handling requirements as described in Executive Order 13556, 32 CFR 2002, and the CUI Registry. Also see the [Incident Management](#) section of this Guide.

Banner Markings.

- GSA-specific marking requirements and examples are addressed on InSite.gsa.gov/cui.
- CUI must be marked with a CUI banner marking at the top of each printed page (banner markings are also authorized as optional at the bottom of each page, but they are not required for GSA). The content of the banner marking must be inclusive of all CUI within the document and must be the same on every page. If the document contains only CUI

Basic, the banner may consist of just the letters CUI. If the document contains CUI Specified, the full marking must be used to indicate the type of CUI and dissemination controls if any.

- Banner markings include one, two, or three elements:
 1. CUI control marking (mandatory for *all* CUI). This marking, **CUI**, by itself, is sufficient to indicate the presence of CUI Basic categories.
 2. CUI category marking (mandatory for CUI *Specified*, optional for CUI *Basic*). If any part of a document contains CUI Specified, then the applicable category marking must appear in the banner, preceded by two slashes and “SP-“ to indicate the specified nature of the category (e.g., CUI//SP-PRVCY). When including multiple categories in the banner they must be alphabetized, with specified categories appearing before any basic categories. Multiple categories in a banner line must be separated by a single forward slash (/).
 3. Limited Dissemination Control Markings (optional for CUI *Basic* or CUI *Specified*). NARA has published a list of several [Limited Dissemination Control Markings](#) that can be applied. Limited Dissemination Control Markings are preceded by a double forward slash (//) and appear as the last element of the CUI banner marking. Limited Dissemination Control Markings may only be applied to CUI to bring attention to any dissemination control called for in the underlying authority or to limit the dissemination of CUI. Limited Dissemination Control Markings should be used only after carefully considering the potential impacts on the timely dissemination of the information to authorized recipients.
- All documents containing CUI must indicate the agency of designation. This may come in several forms, including letterhead, or signature block on the first page of the document or on a cover sheet. A best practice is also to include information for a point of contact or group email address for the office within the organization.

Marking Guidelines.

- Refer to NARA's [NARA's Marking Handbook](#) and [GSA's Marking Manual](#) for detailed information on markings and marking requirements.
- Markings for Categories that GSA is likely to use and links to specific information concerning them is consolidated in [GSA's CUI Catalog](#) for reference.

Cover Sheets

The CUI cover sheet can be used to identify CUI, alert observers from a distance that CUI is present, and serve as a shield to protect the CUI from inadvertent disclosure. CUI Cover sheets are optional but encouraged when dealing with printed materials since they can help

ensure anyone who sees or receives the information is aware of the protection it requires. When not in use though, CUI must be secured in a locked location such as a desk, drawer, or cabinet.

The cover sheet (or transmittal letter if faxing) should:

- Include a designation indicator;
- List any CUI Specified Categories contained in the document or transmission;
- List any applicable Limited Dissemination Controls (markings); and
- List any special handling or dissemination requirements called for by the underlying law, regulation, or Government-wide policy related to the CUI Specified information.
- State that there is no CUI if the attachment is removed.

The CUI cover sheet (Standard Form 901) is available through [GSA's forms library](https://www.archives.gov/cui/additional-tools) or at <https://www.archives.gov/cui/additional-tools>.

Email.

- When emailing CUI outside the GSA network (gsa.gov) it must be in an attachment that is encrypted using a [FIPS-compliant method](#). For best practice include an indicator such as [Contains CUI] at the end of the file name and/or at the end of the subject line of the email
- When marking emails, it is mandatory to include the appropriate banner marking at the top of the email to indicate that the email contains CUI. If the email is forwarded, the banner marking must be carried forward at the top of the forwarding email.
- When sending an email where the attachment is removed and the email no longer contains CUI, add the following statement below the banner marking "When attachment is removed, this email is Uncontrolled Unclassified Information".

Portion Marking.

GSA is not doing portion marking at this time. However, this section is included as information only. If a GSA generated document contains CUI then the whole document is marked as CUI on each page.

- Portion marking is a means to provide information about the sensitivity of a particular section of text, paragraph, bullet, picture, chart, etc. The markings consist of an abbreviation enclosed in parentheses, usually at the beginning of a sentence or title.

- Portion marking is not required, but it is permitted to facilitate information sharing and proper handling, and to assist FOIA reviewers in identifying the CUI within a large document that may be primarily Uncontrolled Unclassified Information.
- If portion markings are used in any portion of a document, they must be used throughout the entire document. All portions or sections must be portion marked, even those that do not contain CUI. The paragraphs that contain CUI should begin with the designation (CUI). Sections that do not contain CUI should be marked as Uncontrolled Unclassified Information, designated with a (U).
- When authorized holders include CUI in documents that also contain classified (CNSI) information, the portions must be marked appropriately. The decontrolling provisions of the CUI Program apply only to the portions marked CUI. See the CUI Marking Handbook for specific guidance on commingling CUI with CNSI.
- See NARA's [Marking Handbook](#) for details on the use of portion markings.

Legacy material.

- Documents that were created prior to implementation of the CUI Program and remain in storage and unused do not need to be marked as CUI.
- Documents that were created prior to implementation of the CUI Program and are made active and used again must be reviewed to see if they qualify as CUI, and if so, be marked with the appropriate CUI markings.
- If requested, the CUI SAO may grant a limited waiver if re-marking is considered prohibitively burdensome.
 - The information must still be safeguarded and disseminated according to CUI procedures. If the information is disseminated outside GSA, the waiver will not apply and the information must be marked with appropriate CUI markings.
 - See the [Waivers of CUI Requirements](#) section of this Guide for additional information.

Challenges to Designation of Information as CUI.

- Authorized holders of CUI who, in good faith, believe that its designation as CUI is improper or incorrect, or who believe they have received unmarked CUI, should send an email to cui@gsa.gov for internal handling or notify the designating agency.
- GSA's SAO will manage challenges to CUI status following this process:
 - The challenge will be emailed to the SAO as soon as it is received.

- The SAO will acknowledge receipt of the challenge within 7 days by writing (via email or letter, as appropriate) to the challenger or the challenger's agency if the exact person is not known. This response will include the anticipated timetable for response and the contact information for the SAO or designee making GSA's decision.
- The SAO will provide the challenger the opportunity to explain, verbally or in writing, their rationale for believing the CUI is inappropriately designated.
- The SAO will ensure that both internal and external challengers have the option of bringing it anonymously, and that challengers are not subject to retribution.
- Until the challenge is resolved, all authorized holders must continue to safeguard and disseminate the challenged CUI at the control level indicated in the markings.
- If a challenging party disagrees with the response to a challenge, that party may use the Dispute Resolution procedures described in 32 CFR 2002.

Working Papers.

Working papers containing CUI must be marked and protected the same way as the finished product and as required for any CUI contained within them. This applies whether or not the working papers will be shortly destroyed, and when no longer needed they should be destroyed as described in the section [Destroying CUI](#) of this Guide.

Supplemental Administrative Markings.

Supplemental Administrative Markings (e.g., Pre-decisional, Draft, Deliberative) may be used with CUI but may not impose additional safeguarding requirements or disseminating restrictions. Their purpose is to note the status of documents under development.

Supplemental markings may not appear in the CUI banners, nor may they be incorporated into the CUI designating/decontrolling indicators or portion markings. Utilizing watermarks is the best way to display supplemental markings.

Sharing CUI (Accessing and Disseminating)

GSA and all agencies in the executive branch are obligated to ensure that information can be shared with others who have an appropriate need for it in furtherance of a Lawful Government Purpose. These information sharing needs must occur within the parameters of the authorities in the CUI Registry and be balanced by protection requirements. Authorized holders must ensure when sharing CUI that entities who receive it continue protecting it to the required standards.

General Practices.

- Individuals may disseminate and permit access to CUI in accordance with the specific laws shown in the CUI Registry if it furthers a Lawful Government Purpose and is not otherwise prohibited by law.
- Not all sensitive or protected information is automatically considered CUI; only specific applicable information that falls within the categories of the CUI Registry should be controlled as CUI. Unclassified information may not be controlled except through the CUI Program, and access to CUI may not be unlawfully or improperly restricted.
- Prior to disseminating CUI, authorized holders must mark CUI according to the CUI Marking Guide and 32 CFR 2002.
- GSA should enter into a written agreement with any intended non-executive branch entity when possible. For more information on agreements and arrangements with non-executive branch entities see [CUI Notice 2018-01](#).
- When a written agreement is not feasible and CUI must be shared, the authorized holder must communicate to the recipient that the Government strongly encourages the non-executive branch entity to protect CUI in accordance with 32 CFR 2002 and the CUI Registry.
- If an authorized person releases CUI in accordance with an applicable information access statute, such as the Freedom of Information Act (FOIA), the CUI shall remain controlled within GSA and will continue to be handled as CUI.

Controls on Accessing and Disseminating CUI.

- Authorized holders of CUI Basic may disseminate and allow access to any authorized recipient if the requirements of this CUI Guide and 32 CFR 2002 are met.
- Authorized holders of CUI Specified may disseminate and allow access as permitted by the authorizing laws, regulations, or Government-wide policies that established that category of CUI Specified.
- In the absence of specific dissemination restrictions from the applicable authority, CUI Specified may be disseminated the same as CUI Basic.
- Only the approved dissemination controls in the CUI Registry that limit who CUI may be disseminated to may be used, and only if they serve a lawful Government purpose, or are required by law, regulation, or Government-wide policy. Refer to the CUI Marking Handbook for further information. If there is significant doubt about whether it is appropriate to use a limited dissemination control, contact the GSA CUI Program Team at cui@gsa.gov for guidance.

Methods of Disseminating CUI.

- Standard commercially available telephone lines are acceptable for the discussion of CUI. Be aware of the surroundings so unauthorized persons are not within hearing distance.
- CUI on Google sites or GSA webpages shall only be on a restricted site and password protected. CUI in Google docs or sheets must maintain limited access to only other authorized holders of that CUI.
- When sending CUI via email outside of the GSA network the CUI must be in an encrypted attachment (sending within the GSA network is appropriately protected). The body of the email must not contain any CUI, but should include the applicable CUI markings. Attachments shall be encrypted using FIPS-compliant WinZip (see [this InSite page](#) for details). Other forms of encryption may be used provided they comply with FIPS Publication 140-2.
- There are alternative methods for sharing information with other agencies. Two are listed below. For other possibilities, check with the CUI team to ensure they are approved.
 - To share with other federal agencies, OMB MAX can be used to create a shared space where files can be stored (<https://community.connect.gov>). MAX is approved for FISMA Moderate (or medium sensitivity) data including Controlled Unclassified Information. It should not be used for classified or highly sensitive information. In addition, users should not post sensitive personally identifiable information (PII) in MAX ([more on their webpage](#)).
 - When sharing with DoD you can use their system, SAFE (<https://safe.apps.mil>). Be sure to check the "encrypt every file" option, as directed in the [SAFE User Guide](#). DoD SAFE utilizes the latest web-browser Transport Layer Security (TLS) encryption protocols to secure files while they are in transit. When the encryption option is selected, files uploaded into SAFE are secured with Advanced Encryption Standard (AES) encryption, a Federal Information Processing Standard (FIPS) 140.2 Level 2 approved encryption method.
- Holders of CUI shall limit access to CUI to only those individuals authorized to handle it, and shall verify that the information reached its destination. See GSA Order CIO 2100.1 IT Security Policy for additional details.
 - When sending CUI by commercial delivery service or courier, address it to only a specific recipient (not to an office or organization). GSA employees must use automated tracking. The US Postal Service or any commercial delivery service may be used to transport CUI as well as any interoffice or interagency mail system.
 - Do not put CUI markings on the outside of the package/envelope.

- CUI documents shall not be left unattended in an open environment, such as on a printer where unauthorized people can have access to the information.
- Faxing of CUI documents is authorized provided the recipient has a Lawful Government Purpose for access. Authorized holders must also confirm the authorized recipient is available to receive the fax, and did indeed receive it.
- Follow the requirements for controls on disseminating CUI Basic or CUI Specified as detailed in the CUI Registry for each applicable category.
- When disseminating CUI through a Federal IT system, that system must be in compliance with FISMA requirements and be authorized to operate at the moderate confidentiality impact value (or higher) as set out in FIPS Publications and NIST Guidance.
- Exceptions:
 - CUI Privacy Category - Without written permission from the employee's supervisor, the Data Owner, and the IT system Authorizing Official (AO), authorized holders shall not physically take information marked with one of the CUI Privacy Categories from GSA facilities (including GSA managed programs housed at contractor facilities under contract), or access it remotely (i.e., from locations other than GSA facilities unless using GSA-approved systems), in accordance with GSA Order CIO 2100.1 IT Security policy.
 - CUI Physical Security Category - Information marked with CUI's Physical Security Category (e.g., sensitive building information, previously marked Sensitive But Unclassified (SBU)) does not require written permission but the authorized holder should confirm that the receiver has a legitimate Lawful Government Purpose for accessing building information, as stated in [PBS 3490.3 CHGE 1 Security for Sensitive Building Information Related to Federal Buildings, Grounds, or Property](#). If the requestor is unknown to the authorized holder, the authorized holder should contact the designated project manager if the project is in design or construction phase, or the building manager, whichever is responsible for the building/property related to the request for verification. See PBS 3490 for details, or for information concerning emergency situations.

Sending and Receiving CUI.

While Executive Branch agencies are in various stages of implementing the CUI Program, CUI may be shared, but care must be taken regarding legacy vs. CUI markings.

- Receiving marked legacy information when the recipient has implemented the CUI Program.

- If the receiving agency plans to reuse or transmit the legacy marked information to another agency, then it must evaluate the information and remark it as CUI as appropriate.
- If applicable, the receiving agency must also adhere to any agency marking waivers as they apply to internal dissemination.
- If applicable, the receiving agency should apply any appropriate Limited Dissemination Control Markings (LDCMs).
- Receiving agencies should NOT reuse legacy markings, such as FOUO or SBU, on new documents that are derived from marked legacy information.
- Agencies should contact the originator of the material if they have any questions.
- Receiving information marked as CUI when the recipient has NOT implemented the CUI Program.
 - Transmitting agencies may feel some trepidation about the security of their information when sending it to another agency that has not implemented the CUI Program, as the recipient may not inherently protect this information to the same standards outlined in the CUI Program.
 - For this reason, the transmitting agency may wish to directly convey safeguarding requirements for this information to the receiver.
 - Recipients must then protect this information in accordance with any safeguarding guidelines from the originators of the material, individual agency policy, and/or any Limited Dissemination Controls.
 - Receiving agencies should NOT remove CUI markings from the information.
 - Agencies should contact the originator of the material if they have any questions.
- Sending information marked as CUI when the recipient has NOT implemented the CUI Program.
 - The transmitting agency must keep its CUI markings on the information.
 - If CUI Specified or Limited Dissemination Controls are contained in the transmission of the information, the sender should also include a description of the safeguarding or dissemination requirements related to the information.

- Transmitting agencies may want to use the CUI Cover sheet to express these additional safeguards to recipients.
- Sending marked legacy information when the recipient has implemented the CUI Program.
 - Transmitting agencies must provide a point of contact with the information in case the recipient has questions about safeguarding the material.
 - Any special handling requirements associated with the information, such as limited dissemination controls, should be conveyed through transmittal or in a manner apparent to the recipient of the information.

CUI as Records

CUI documents may be official GSA records. If they are determined to be records they must not be destroyed until applicable records retention has been met and any applicable litigation hold has been lifted. See [CIO 1820.2 GSA Records Management Program](#) for additional information on managing records. For clarification, convenience copies of documents marked CUI should be protected as CUI, but would not be a record. The Agency records retention schedules and other recordkeeping guidance is found on [Insite](#).

Transferring

After December 31, 2022, GSA will no longer be transferring paper records to the National Archives, be it for temporary or permanent purposes. Thus, only electronic records are applicable to the conversation of transferring records to NARA. Recordkeeping custodians, such as Recordkeeping SMEs per CIO 1820.2, will be required to store, track, and properly destroy non-permanent records and to transfer permanent electronic records per the applicable [GSA records retention schedule](#). When CUI markings are no longer applicable to documents they should be removed and those permanent records transferred to the National Archives and Records Administration (NARA). Any records retaining a CUI mark after transfer to NARA must indicate on the transfer form the presence of CUI. Refer to [Records Management pages on InSite](#) for additional information.

Destroying

CUI records and copies must be destroyed as required by the CUI Program. See the section [Destroying CUI](#) of this Guide for details and for information.

Decontrolling

Decontrolling occurs when an authorized holder, consistent with the CUI Registry, removes safeguarding or dissemination controls from CUI that no longer require such controls. Decontrol may occur automatically or through agency action.

- CUI should be decontrolled (removed from protection of the CUI Program) as soon as practicable when:

- Laws, regulations, or Government-wide policies no longer require CUI controls;
 - An authorized holder from the designating agency requests to decontrol it;
 - The designating agency releases it to the public in response to a FOIA request, which GSA considers to be a public release of the CUI or provides the CUI pursuant to a Privacy Act request (See [CUI Joint Memo 2018-11-19](#) for details);
 - It is consistent with any declassification action under Executive Order 13526 or any predecessor or successor order; or
 - A predetermined event or date occurs, as described in the authorizing regulations listed in the CUI Registry.
- Decontrolling CUI relieves authorized holders from requirements to handle the information under the CUI Program, but does not constitute authorization for public release.
 - Once decontrolled, any public release of information that was formerly CUI must be in accordance with applicable laws and GSA policies on the public release of information.
 - Only authorized holders may decontrol CUI.
 - The authorized holder must clearly indicate that decontrolled CUI is no longer controlled when restating, paraphrasing, reusing, releasing to the public, or donating CUI to a private institution. Line through or remove the CUI markings to indicate it is no longer being controlled as CUI.
 - Authorized holders may request that a designating agency decontrol certain CUI. If an authorized holder publicly releases CUI in accordance with the designating agency's authorized procedures, the release constitutes decontrol of the information. The authorized procedure should be handled by the CUI SAO. Contact the GSA CUI Program Manager at cui@gsa.gov for information.
 - Unauthorized disclosure of CUI does not constitute decontrol. CUI must not be decontrolled solely due to unauthorized disclosure. Proper procedures must still be followed for decontrolling and possible misuse.
 - When laws, regulations, or Government-wide policies require specific decontrol procedures, authorized holders must follow such requirements.

- Records Management Note: The Archivist of the United States may decontrol records transferred to the National Archives in accordance with 32 CFR 2002.34, absent a specific agreement to the contrary with the designating agency.

Decontrolling Indicators

- Where feasible, authorized holders must include a specific decontrolling date or event with all CUI. Any decontrolling schedule holding this information should be readily apparent to an authorized holder. The CUI may be decontrolled as of the specific date without further review by the designator. Indicate the date or event when the information can be decontrolled by adding a statement in the footer or elsewhere on the page.
- If using an event to authorize decontrol it must be foreseeable and verifiable by any authorized holder. The designator should be the POC and should provide a method of contact for authorized holders to verify that the event has occurred.
- Authorized holders must clearly indicate when CUI is no longer controlled. For small documents, all CUI markings within a decontrolled CUI document shall be crossed out. For larger documents, strike-through of markings can be made on the first page or cover page, and on the first page of any attachments that contain CUI. The first page or cover page should also indicate that the CUI markings are no longer applicable and the date which the document was decontrolled.

Destroying CUI

- CUI may be destroyed when:
 - GSA no longer needs the information; and
 - [GSA records disposition schedules](#) no longer require retention of the records. For more information refer to GSA Order [CIO 1820.2GSA Records Management Program](#).
- Destroy CUI, including in electronic form and physical media (CDs, DVDs, flash/external drives, external/portable drives, etc.), in a manner that makes it unreadable, indecipherable, and irrecoverable. CUI may not be placed in office trash bins or recycling containers. CUI must be destroyed as required by the authority for the applicable category. If the authority does not mention a specific method, it should be destroyed according to [SP 800-88, Guidelines for Media Sanitization](#). Specifically, the minimum standard for shredding CUI is to particles that are 1mm x 5mm (.04 inches x .2 inches).
- If a company is contracted to shred CUI, the contract must ensure protection of the CUI throughout the process, including while in transit and during transfer between collection bins and the shredding equipment. Bins used to collect CUI before being transferred for shredding must be locked and be marked as acceptable for temporarily holding CUI.

- Equipment that is used for the electronic storage or processing of CUI (including copiers, fax machines, scanners, etc.) shall be sanitized per GSA Order CIO 2100.1 IT Security Policy whenever it is transferred, sold, or re-assigned to a person not authorized access to the CUI previously contained in the equipment.
- Since destruction is required by specialized equipment, documents containing CUI information must not be destroyed at an alternate work location (telework location, contractor site, etc.) that doesn't have the proper equipment. CUI must be returned to GSA for destruction in the appropriate shredders or collection bins, or returned to an authorized holder (e.g., a Contracting Officer, the creator of the information, etc.) for proper destruction.
- Managers, CORs, and other leaders should periodically review work areas and employee/contractor practices to ensure that sensitive material is being discarded in an appropriate manner.

Training

Employees must receive initial training within 60 days of employment and at least once every 2 years thereafter. The CUI policy delineates the specifics of mandatory training. Advanced Training is also available and may be mandatory for those who create, own, and/or use CUI regularly.

Self-Inspection

- In accordance with 32 CFR 2002, GSA must maintain internal oversight efforts to measure and monitor implementation and management of the CUI Program.
- The Self-Inspection Program includes:
 - Self-inspection methods, reviews, and assessments that serve to evaluate program effectiveness, measure the level of compliance, and monitor the progress of CUI implementation;
 - Documents self-inspections and recording findings;
 - Procedures by which to integrate lessons learned and best practices arising from reviews and assessments into operational policies, procedures, and training;
 - A process for resolving deficiencies and taking corrective actions in an accountable manner; and
 - Analysis and conclusions from the self-inspection program, documented on an annual basis and as requested by the CUI Executive Agent.

- The details and processes of the program will be referenced or included in this Guide when finalized.

Misuse

Misuse of CUI occurs when someone uses CUI in a manner not in accordance with 32 CFR 2002, the CUI Registry, this policy, or the applicable laws, regulations, and Government-wide policies that govern the affected information. This may include intentional violations or unintentional errors in safeguarding or disseminating CUI. This may also include designating or marking information as CUI when it does not qualify as CUI.

- The CUI SAO is the point of contact for the Executive Agent when the EA receives reports of misuse by GSA from another agency or from within GSA.
- All employees, contractors and lessors shall report suspected or confirmed misuse of CUI as soon as possible. See the Incident Management section below for more details.
- Where laws, regulations, or Government-wide policies governing certain categories of CUI specifically establish sanctions for the misuse of CUI, agencies are responsible for coordinating with the appropriate parties concerning such sanctions.

Sanctions for Misuse of CUI

- Consequences for misuse of CUI are based on existing GSA policies and the type of information involved (building information, PII, etc.). Each policy's applicable consequences shall apply. In general, any employee who does not comply with this Guide or the laws, regulations, or Government-wide policies pertaining to CUI may incur disciplinary action in accordance with [HRM 9751.1 Maintaining Discipline](#).
- In the event a contractor employee misuses CUI, the matter shall be referred to the cognizant contracting officer to determine whether remedies should be imposed under the contract.
- When an individual is found to be responsible for the commission of a CUI incident, he/she may be subject to administrative, disciplinary, or criminal sanctions. The underlying law, regulation, or Government-wide policy is consulted to determine guidance on sanctions. The type of sanctions imposed is based on several considerations, including:
 - Severity of the incident;
 - Intent of the person committing the incident;
 - Extent of training the person(s) has received;
 - Frequency of which the individual has been found responsible in the commission of other such incidents, to include Security Violations or Infractions involving classified information.

- Specific requirements in applicable laws, policies or regulations.
- Sanctions include, but are not limited to, verbal or written counseling, reprimand, suspension from duty and pay, removal, removal of access to CUI, or criminal penalties. The underlying law, regulation, or Government-wide policy is consulted for guidance, as appropriate.
- Administrative sanctions are assessed in accordance with the policies, procedures, and practices established by GSA's Office of Human Resources Management, and actions involving the suspension or revocation of a security clearance are taken in accordance with the applicable Executive Orders.
- Where a proposed sanction associated with the unauthorized disclosure of CUI is in excess of a reprimand, the matter is coordinated with the Office of the General Counsel (OGC). Further, where a criminal violation has occurred that may result in a criminal prosecution, the matter is coordinated with OGC, the Office of the Inspector General (OIG), and the Department of Justice.

Incident Management

An incident can be thought of as a violation (or imminent threat of violation) of security or privacy policies or standard practices. Incidents could cause loss or damage to hardware, software, networks, or data (electronic or hard copy), or could affect personnel. They could be successful or failed attempts to gain unauthorized access to CUI applications, unauthorized entry into a building or room, unauthorized use of a system, unauthorized acquiring or viewing of sensitive data, or similar situations.

- GSA Order CIO 2100.1M IT Security Policy and the IT Security Procedural Guide [Incident Response \(IR\) \[CIO IT Security 01-02\]](#) discuss processes for reporting all types of incidents, and these procedures should be followed for CUI incidents.
- Suspicious conduct and/or violations of CUI policy are reportable to the Insider Threat Program under [ADM P 2400.1A, Appendix B](#).
- Authorized holders and all GSA employees are responsible for reporting incidents of misuse involving CUI. Specific actions include:
 - **Employees and contractor employees:** Notify the IT Service Desk at 866-450-5250 or ITServiceDesk@gsa.gov immediately.
 - **Contracts:** Contractors are responsible for reporting incidents in accordance with the requirements of their contract(s). Two Federal Acquisition Regulation (FAR) cases have been opened to incorporate the applicable incident reporting requirements for PII and CUI into the FAR.

- **Leases:** For building leases involving CUI (previously SBU), the Lessor is responsible for reporting incidents to the Lease Contracting Officer and the GSA Incident Response Team at gsa-ir@gsa.gov.
- Reportable CUI incidents could include but are not limited to:
 - Any knowing, willful, or negligent action that could reasonably be expected to result in an unauthorized disclosure of CUI.
 - Any knowing, willful or negligent action to designate information as CUI contrary to the requirements of Executive Order 13556, and its implementing directives.
 - Any incident involving computer or telecommunications equipment or media that may result in disclosure of CUI to unauthorized individuals, or that results in unauthorized modification or destruction of CUI system data, loss of CUI computer system processing capability, or loss or theft of CUI computer system media.
 - Any incident involving the processing of CUI on computer equipment that has not been specifically approved and accredited for that purpose by an authorized official.
 - Any incident involving the shipment of CUI by an unapproved method, or any evidence of tampering with a shipment, delivery, or mailing of packages containing CUI.
 - Any incident in which CUI is not stored by an approved means.
 - Any incident in which CUI is inadvertently revealed to or released to a person not authorized access.
 - Any incident in which CUI has been destroyed by unauthorized means.
 - Any incident in which CUI has been reproduced without authorization or contrary to specific restrictions imposed by the originator.
 - Any incident in which CUI has been shared contrary to an applied dissemination control marking.
 - Any other incident in which CUI is not safeguarded or handled in accordance with prescribed procedures.
- Individuals who share CUI external to GSA and become aware of any incident, regardless of whether it did or could have resulted in any actual, potential, or suspected loss or compromise of CUI shall **immediately report the incident of misuse to the IT Service Desk**. The IT Service Desk will notify the Incident Response Team who will

notify the CUI Program Manager. The PM will assist the SAO in determining if the incident of misuse warrants an inquiry and reporting to the Executive Agent.

Waivers of CUI Requirements

When information is designated as CUI but it is determined that marking it as CUI is excessively burdensome, the SAO may approve waivers of all or some of the CUI marking requirements while that CUI remains within agency control.

- As stated in CIO 2103.2 GSA CUI Policy, legacy marking of archived documents is not required unless the documents, files, or systems are made active again. The policy grants automatic waivers to CUI marking requirements for legacy material that remains unused. Therefore, if there is a substantial amount of stored information with legacy markings and removing legacy markings and designating or re-marking it as CUI would be excessively burdensome, a waiver of these requirements for some or all of that information while it remains under agency control, and the information is not being used, is granted.
- In urgent circumstances, the CUI SAO may waive the requirements of the CUI policy or the CUI Registry for any CUI within GSA's possession or control, unless specifically prohibited by applicable laws, regulations, or Government-wide policies.
- To allow sharing CUI with other agencies or nonfederal entities or persons in an emergency situation, the SAO may grant an exigent circumstances waiver. In such cases, the authorized holders must make recipients aware of the CUI status of any disseminated information.
- Limited marking waivers may be granted to allow omission of CUI markings while the document remains within GSA control (CUI is not to be shared outside of GSA unless properly marked or an exigent circumstances waiver is granted). The information still needs to be protected according to CUI requirements. Waivers may be requested by emailing cui@gsa.gov and can be granted when it is impractical to individually mark CUI due to quantity or nature of the information (e.g., forms, blueprints, etc.).
- When the circumstances requiring the waiver come to an end, the SAO must reinstitute the requirements for all CUI covered by the waiver without delay.
- The SAO must retain a record of each waiver of CUI requirements, notify authorized recipients and the public of the waivers, and report the waivers to the CUI Executive Agent in the CUI Annual Report.
- Contact the CUI team at cui@gsa.gov for more information about waivers and/or to obtain a waiver request form.

Appendix A - References

Executive Order 13556 Controlled Unclassified Information (CUI)	https://obamawhitehouse.archives.gov/the-press-office/2010/11/04/executive-order-13556-controlled-unclassified-information
32 CFR 2002 Controlled Unclassified Information (CUI) (Implementing Directive)	https://ecfr.io/Title-32/pt32.6.2002
NIST Special Publication 800-53, Security and Privacy Controls for Federal Information Systems and Organizations, Revision 5	https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r5.pdf
NIST Special Publication, 800-88, Guidelines for Media Sanitization, Revision 1	https://csrc.nist.gov/publications/detail/sp/800-88/rev-1/final
NIST Special Publication 800-171 Protecting CUI in Nonfederal Information Systems and Organizations	https://csrc.nist.gov/publications/detail/sp/800-171/rev-2/final
SP 800-172 Enhanced Security Requirements for Protecting Controlled Unclassified Information: A Supplement to NIST Special Publication 800-171	https://csrc.nist.gov/publications/detail/sp/800-172/final
SP 800-171A Assessing Security Requirements for Controlled Unclassified Information	https://csrc.nist.gov/publications/detail/sp/800-171a/final
FIPS Publication 199, Standards for Security Categorization of Federal Information and Information Systems	https://csrc.nist.gov/publications/detail/fips/199/final
FIPS Publication 200, Minimum Security Requirements for Federal Information and Information Systems	https://csrc.nist.gov/publications/detail/fips/200/final
FAR Clause 52.204-21, Basic Safeguarding of Contractor Information Systems	https://federalregister.gov/a/2016-11001
Federal Information Security Modernization Act (FISMA)	https://www.congress.gov/113/plaws/publ283/PLAW-113publ283.pdf

GSA Directives

PBS 3490.3 CHGE 1 Security for Sensitive Building Information Related to Federal Buildings, Grounds, or Property	https://www.gsa.gov/directive/security-for-sensitive-building-information-related-to-federal-buildings,-grounds,-or-property-
CIO 2200.1 GSA Privacy Program	https://www.gsa.gov/directive/gsa-privacy-act-program
CIO 2100.1 GSA Information Technology (IT) Security Policy	https://www.gsa.gov/directive/gsa-information-technology-(it)-security-policy-0
GSA Order CIO 2103.2 Controlled Unclassified Information (CUI) Policy	https://insite.gsa.gov/directives-library/controlled-unclassified-information-cui-policy-1
CIO 2104.1B GSA Information Technology (IT) General Rules of Behavior	https://www.gsa.gov/directive/gsa-information-technology-(it)-general-rules-of-behavior-
CIO 2180.2 GSA Rules of Behavior for Handling Personally Identifiable Information (PII)	https://www.gsa.gov/directive/gsa-rules-of-behavior-for-handling-personally-identifiable-information-(pii)-
CIO 2231.1 GSA Data Release Policy	https://www.gsa.gov/directive/gsa-data-release-policy
CIO 9297.2C GSA Information Breach Notification Policy	https://www.gsa.gov/directive/gsa-information-breach-notification-policy-
HRM 9751.1 Maintaining Discipline	https://www.gsa.gov/directive/maintaining-discipline
OAS 1820.1 P GSA Records Management Program	https://www.gsa.gov/directive/gsa-records-management-program
Media Protection Guide [CIO IT Security 06-32]	See IT Security Procedural Guides page on InSite: https://insite.gsa.gov/topics/information-technology/security-and-privacy/it-security/it-security-procedural-guides
Incident Response (IR) [CIO IT Security 01-02]	See IT Security Procedural Guides page on InSite: https://insite.gsa.gov/topics/information-technology/security-and-privacy/it-security/it-security-procedural-guides

Appendix B - Definitions

- Agency (also Federal agency, executive agency, executive branch agency) is any “executive agency,” as defined in 5 U.S.C. 105; the United States Postal Service; and any other independent entity within the executive branch that designates or handles CUI.
- Agreements are arrangements in which agencies set out CUI handling requirements for contractors and other information-sharing partners when the arrangement with the other party involves CUI. Agreements include, but are not limited to, contracts, grants, licenses, certificates, memoranda of agreement or understanding, and information-sharing agreements. When disseminating or sharing CUI with non-executive branch agencies, agencies must enter into written agreements that include CUI provisions whenever possible (see 32 CFR 2002.13(a)(6) and (7) for details). When sharing information with foreign entities, agencies should enter agreements when feasible (see 32 CFR 2002.13(a)(6) and (7) for details).
- Authorized holder is an individual, organization, or group of users that is permitted to designate or handle CUI, in accordance with 32 CFR 2002. Authorized holders who create and manage CUI must be very familiar with the CUI categories and CUI policies, complete all training, and know how to determine what information is CUI and how it should be handled. They will determine the type of CUI (Basic or Specified -- see “Safeguarding Standards” sections of this Guide), the applicable category, and the necessary markings and decontrol actions required based on the type of information and the specifics within this Guide.
- Classified information is information that Executive Order 13526, “Classified National Security Information,” December 29, 2009 (3 CFR, 2010 Comp., p. 298), or any predecessor or successor order, or the Atomic Energy Act of 1954, as amended, requires to have classified markings and protection against unauthorized disclosure.
- Controlled environment is any area or space an authorized holder deems to have adequate physical or procedural controls (e.g., barriers or managed access controls) to protect CUI from unauthorized access or disclosure.
- Control level is a general term that encompasses the category of specific CUI, along with any specific safeguarding and disseminating requirements.
- Controlled Unclassified Information (CUI) is information that requires safeguarding or dissemination controls pursuant to and consistent with applicable law, regulations, and government-wide policies but is not classified under Executive Order 13526 or the Atomic Energy Act, as amended.
- Controls are safeguarding or dissemination requirements that a law, regulation, or Government-wide policy requires or permits agencies to use when handling CUI. The requirements may be specifically stated in the authority or the authority may generally require agencies to safeguard the information (in which case, the agency applies the controls from Executive Order 13556, this rule, and the CUI Registry).
- CUI Basic is the set of CUI categories that use the CUI Program’s uniform set of controls for handling CUI set forth in this rule. CUI Basic differs from CUI Specified in that, although laws, regulations, or Government-wide policies require agencies to protect or control the CUI Basic information, they do not specifically articulate any safeguarding or dissemination controls for that information. The CUI Basic controls therefore apply

whenever CUI Specified ones do not cover the involved CUI. (See definition of CUI Specified in this section.)

- CUI categories are those types of information for which laws, regulations, or Government-wide policies require agencies to exercise safeguarding or dissemination controls, and which the CUI Executive Agent has approved and listed in the CUI Registry.
- CUI category markings are the markings approved by the CUI Executive Agent for the categories listed in the CUI Registry.
- CUI Executive Agent is the National Archives and Records Administration (NARA), which implements the executive branch-wide CUI Program and oversees Federal agency actions to comply with Executive Order 13556. NARA has delegated this authority to the Director of the Information Security Oversight Office (ISOO).
- CUI Program is the executive branch-wide program to standardize CUI handling by all Federal agencies. The Program includes the rules, organization, and procedures for CUI, established by Executive Order 13556, 32 CFR 2002, and the CUI Registry.
- CUI Program Manager (PM) is an agency official, designated by the agency head or CUI Senior Agency Official, to serve as the official representative to the CUI Executive Agent on the agency's day-to-day CUI Program operations, both within the agency and in interagency contexts.
- CUI Registry is the online repository for all information, guidance, policy, and requirements on handling CUI, including everything issued by the CUI Executive Agent other than 32 CFR 2002. Agencies and authorized holders must follow the requirements in the CUI Registry. Among other information, the CUI Registry identifies all approved CUI categories, provides general descriptions for each, identifies the basis for controls, establishes markings, and sets out handling procedures. The CUI Registry is located on the www.archives.gov/cui/ website (or successor site).
- CUI Senior Agency Official (SAO) is a senior official designated in writing by an agency head and responsible to that agency head for implementation of the CUI Program within that agency. The CUI SAO is the primary point of contact for official correspondence, accountability reporting, and other matters of record between the agency and the CUI Executive Agent.
- CUI Specified is the set of CUI categories that each have specific handling controls required or permitted by authorizing laws, regulations, or Government-wide policies.
- Decontrolling is the removal of safeguarding or dissemination controls from CUI when the information is no longer considered CUI.
- Designating CUI is when an authorized holder determines that a specific item of information falls into a CUI category.
- Designating agency is the executive branch agency that designates a specific item of information as CUI.
- Disseminating occurs when authorized holders transmit, transfer, or provide access to CUI to other authorized holders through any means, whether internal or external to the agency.
- Document means any tangible thing which constitutes or contains information, and means the original and any copies (whether different from the originals because of notes made on such copies or otherwise) of all writings of every kind and description over which an agency has authority, whether inscribed by hand or by mechanical, facsimile,

electronic, magnetic, microfilm, photographic, or other means, as well as telephonic or visual reproductions or oral statements, conversations, or events, and including, but not limited to: correspondence, email, notes, reports, papers, files, manuals, books, pamphlets, periodicals, letters, memoranda, notations, messages, telegrams, cables, facsimiles, records, studies, working papers, accounting papers, contracts, licenses, certificates, grants, agreements, computer disks, computer tapes, telephone logs, computer mail, computer printouts, worksheets, sent or received communications of any kind, teletype messages, agreements, diary entries, calendars and journals, printouts, drafts, tables, compilations, tabulations, recommendations, accounts, work papers, summaries, address books, other records and recordings or transcriptions of conferences, meetings, visits, interviews, discussions, or telephone conversations, charts, graphs, indexes, tapes, minutes, contracts, leases, invoices, records of purchase or sale correspondence, electronic or other transcription of taping of personal conversations or conferences, and any written, printed, typed, punched, taped, filmed, or graphic matter however produced or reproduced. Document also includes the file, folder, exhibits, and containers, the labels on them, and any metadata associated with each original or copy. Document also includes voice records, film, tapes, video tapes, email, personal computer files, electronic matter, and other data compilations from which information can be obtained, including materials used in data processing.

- Federal information system is an information system that a Federal agency uses or operates, or that a contractor or other non-executive branch entity operates on behalf of an agency. An information system operated on behalf of an agency provides data processing services to the agency that the Government might otherwise perform itself but has decided to outsource. This includes systems operated exclusively for Government use and systems operated for multiple users (multiple Federal agencies or Government and private sector users) such as email services, cloud services, etc. A GSA information system is an example of a federal information system.
- Foreign entity is a foreign Government, international or foreign public or judicial body, international or foreign private organization (including contractors and vendors), foreign individual (including contractors and vendors), or an element of such an organization that is established, operated, and controlled by individual(s) acting outside the scope of any official capacity as officers, employees, or agents of the executive branch of the Federal Government.
- Full Operational Capability (FOC) is attained when all organizations scheduled to receive a system have received it and have the ability to employ and maintain it. For the CUI Program, FOC occurs when policy, training, physical requirements, and IT Systems are all in place and align with the CUI Program. An agency can achieve FOC ahead of other agencies.
- Handling is any use of CUI, including but not limited to marking, safeguarding, transporting, disseminating, reusing, and disposing of the information.
- Initial Operational Capability (IOC) is attained when an agency has their CUI policy in place, has verified physical safeguarding requirements, and has initiated (or completed) training of its workforce. Some of the older protection practices might still be in place. An agency IOC may be different than an IOC for the entire Executive branch.

- Lawful Government purpose is any activity, mission, function, operation, or endeavor that the U.S. Government authorizes or recognizes within the scope of its legal authorities.
- Legacy material is unclassified information that an agency marked as restricted from access or dissemination in some way, or otherwise controlled, prior to the CUI Program's existence.
- Limited dissemination is any CUI Executive Agent-approved control on disseminating CUI.
- Misuse of CUI occurs when someone uses CUI in a manner not in accord with the policy contained in Executive Order 13556, 32 CFR 2002, and the CUI Registry, or the applicable laws, regulations, and Government-wide policy that establish the affected CUI categories. .
- Non-executive branch entity is a person or organization established, operated, and controlled by an individual(s) acting outside the scope of any official capacity as officers, employees, or agents of the executive branch of the Federal Government. Such entities may include elements of the legislative or judicial branches of the Federal Government; State, interstate, Tribal, or local Government elements; private organizations; or international individuals, including contractors and vendors. This does not include individuals or organizations that may receive CUI information pursuant to federal disclosure laws, including the Freedom of Information Act and the Privacy Act of 1974.
- Nonfederal information system is any information system that does not meet the criteria for a Federal information system. It is generally considered a system that contains Government information but is not owned or managed by a Government agency. Agencies must follow the guidelines of NIST SP 800–171 when establishing security requirements to protect CUI's confidentiality on nonfederal information systems.
- Personally Identifiable Information (PII) is information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information. Because there are many different types of information that can be used to distinguish or trace an individual's identity, the term PII is necessarily broad. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified using information that is linked or linkable to said individual. In performing this assessment, it is important to recognize that information that is not PII can become PII whenever additional information is made publicly available — in any medium and from any source — that, when combined with other information to identify a specific individual, could be used to identify an individual (e.g. SSNs, name, DOB, home address, home email).
- Portion is ordinarily a section within a document, and may include subjects, titles, graphics, tables, charts, bullet statements, sub-paragraphs, bullets points, or other sections.
- Protection includes all controls an agency applies or must apply when handling information that qualifies as CUI.
- Public release occurs when an agency makes information formerly designated as CUI available to members of the public through the agency's official release processes. Disseminating CUI to non-executive branch entities as authorized does not constitute public release; nor does releasing information to an individual pursuant to the Privacy Act of 1974 or disclosing it in response to a FOIA request.

- Records are agency records and Presidential papers or Presidential records (or Vice – Presidential), as those terms are defined in 44 U.S.C. 3301 and 44 U.S.C. 2201 and 2207. Records also include such items created or maintained by a Government contractor, licensee, certificate holder, or grantee that are subject to the sponsoring agency's control under the terms of the agreement.
- Re-use means incorporating, disseminating, restating, or paraphrasing CUI from its originally designated form into a newly created document.
- Self-inspection is an agency's internally managed review and evaluation of its activities to implement the CUI Program.
- Unauthorized disclosure occurs when individuals or entities, either intentionally or unintentionally, gain access to CUI when such access does not further a Lawful Government Purpose. Unauthorized disclosure may be intentional or unintentional.
- Uncontrolled unclassified information is information that neither Executive Order 13556 nor classified information authorities cover as protected. Although this information is not controlled or classified, agencies must still handle it in accord with Federal Information Security Modernization Act (FISMA) requirements.
- Working papers are documents or materials, regardless of form, that an agency or user expects to revise prior to creating a finished product.

Resolution No. 2025-09

Approving and Authorizing the Execution and Delivery of the Federal Project Agreement

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, the Toll Facility Act and SB 985 authorizes SANDAG, among other things, to issue bonds for the acquisition, construction and completion of the Project and to impose tolls or user fees for the repayment of the bonds and payment of the cost for maintenance and capital improvement costs of United States Federal Agencies, including the United States General Services Administration (GSA), and the United States Customs and Border Protection (CBP); and

WHEREAS, a proposed form of the Federal Project Agreement between SANDAG, Caltrans, GSA and CBP is attached hereto as Attachment 2 and has been 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 attached Federal Project Agreement presented to this meeting and the terms and conditions thereof are hereby approved. 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 Federal Project 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 Federal Project Agreement including, without limitation, any amendment thereof or other agreements related thereto, that may be necessary or desirable in connection with financing, future Project phasing, donation acceptance, 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 Federal Project 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 Federal Project Agreement.

Section 5. This Resolution shall take effect immediately upon its adoption and

PASSED AND ADOPTED this 10th day of January 2025.

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.