



NORTH AMERICAN DEVELOPMENT BANK

POLICIES REGARDING DISCLOSURE AND CONFIDENTIALITY

Recognizing that Chapter II, Article III, Section 14(a), of the *Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a North American Development Bank* (the Charter) requires the Bank to establish procedures to ensure, to the extent possible, public availability of documentary information on all projects for which a request for assistance or an application for certification or financing is made; and

Mindful that Chapter II, Article III, Section 15(a), of the Charter prohibits the Bank from making public information with respect to which a Party to the Charter has notified the Bank that public disclosure would impede its law enforcement and that Chapter II, Article III, Section 15(b) of the Charter requires that the Bank establish regulations to protect from disclosure business or proprietary information and information the disclosure of which would violate personal privacy or the confidentiality of government decision-making; and

Affirming the policy of the Bank that all the documentary information in the possession of the Bank will be available for disclosure to the public, unless it is information that is designated confidential under the Charter or pursuant to these policies; and

Recognizing that Chapter IV, Article VII, Section 1, of the Charter establishes that the Board of Directors may adopt such rules and regulations as may be necessary or appropriate to conduct the business of the Bank;

The Board of Directors of the North American Development Bank adopts the following policies:

ARTICLE I – DEFINITIONS

1.1. *Business or Proprietary Information.* Trade secrets or commercial or financial information provided to the Bank by the party requesting a confidentiality designation that:

- (a) is privileged and confidential;
- (b) has not been released to any person or organization other than the Bank, a national or subnational government of the United States or Mexico, as required by law, or a person or organization that is not bound by a confidentiality agreement with respect to the information; and
- (c) if disclosed would be reasonably likely to cause substantial harm to the competitive or economic position of the party; or information that is the subject of an application for a patent.

1.2. *Trade Secret, Commercial or Financial Information.* For purposes of paragraph 1.1. above, the term “trade secret” is a secret, commercially valuable plan, formula, process or

device used for making, preparing, compounding or processing trade commodities, and which is the result of either innovation or substantial effort, and the identity of which is not readily discoverable through reverse engineering. For purposes of paragraph 1.1. above, the term “commercial or financial information” might include, for example, business sales statistics, research data, innovative technologies or designs, customer and supplier lists, internal operating costs, information on internal financial conditions and information used in bidding processes for contracting and subcontracting.

Notwithstanding the definition of “business or proprietary information” in paragraph 1.1., information concerning a hazardous chemical, extremely hazardous substance, or toxic chemical (as defined by the domestic law of either Party) that could be used, transferred or released by a project for which the Bank has received a request for assistance or an application for certification or financing and such use, transfer or release could result in a significant environmental effect under Chapter III, Article II, Section 2(c), of the Charter, shall not be considered business or proprietary information by the Bank under these policies, with the exception that the specific chemical identity may be designated confidential as a trade secret by the Bank if it meets all of the requirements of paragraphs 1.1 and 1.2. of these policies.

1.3. *Specific Chemical Identity.* For purposes of paragraph 1.3. above, the term “specific chemical identity” includes the chemical name and other specific identification, but does not include the generic class or category of the hazardous chemical, extremely hazardous substance or toxic chemical.

1.4. *Government Decision-making.* Internal, pre-decisional deliberations or analyses relating to a project or proposed project and generated by any national or subnational government agency of either Party. For purposes of determining whether or not information is pre-decisional, a decision on a matter will be deemed to have been taken when an agency official with either original or delegated authority to take final agency action on the matter, has in fact taken such action. The final agency decision will be available to the public.

ARTICLE II – PUBLIC ACCESS TO INFORMATION

2.1. All electronic and documentary information in the possession of the Bank shall be available to the public during normal business hours at the Bank’s office in San Antonio, Texas or Ciudad Juarez, Chihuahua, unless the information is:

- (a) confidential under Chapter II, Article III, Section 15(a), of the Charter, which states that the Bank shall not make public information if the Government of the United States of America or the United Mexican States notifies the Bank in writing that public disclosure of the information would impede its law enforcement; or
- (b) determined by the Bank, acting independently or at the request of a party submitting information to the Bank, to be confidential in accordance with Chapter II, Article III, Section 15 (b), of the Charter and pursuant to Article I of these policies, or information the disclosure of which would violate personal privacy.

2.2. Such non-confidential electronic or documentary information shall be available to the public at the Bank's office in San Antonio, Texas or Ciudad Juarez, Chihuahua. Photocopies of the first ten pages of any particular request (e.g., file on project application for certification or financing) shall be provided free of cost. Copies of additional pages shall be available at a cost to be determined by the Bank's Managing Director, which shall reflect only the current costs of duplication.

2.3. No project shall be recommended or considered for certification or financing until all claims of confidentiality are fully resolved.

ARTICLE III – REQUEST FOR CONFIDENTIALITY DESIGNATION

3.1. A project sponsor who requests assistance or submits an application for certification and financing to the Bank may request that the Bank designate as confidential, in accordance with Chapter II, Article III, Section 15(c), of the Charter, all or part of the information provided by the party in its request or application. The project sponsor must identify the category of information for which a confidentiality designation is requested and provide a written statement that information for which a confidentiality designation is requested is not otherwise available to the public.

ARTICLE IV – RESPONSE TO REQUEST FOR CONFIDENTIALITY DESIGNATION

4.1. With respect to requests from project sponsors for confidentiality designations for information meeting the definitions in paragraphs 1.1 or 1.2 above, the following procedures shall apply.

- (a) Upon receiving such request, the Bank shall immediately designate such information as confidential.
- (b) In the event the Bank's Chief Environmental Officer (CEVO) determines that any of the designated confidential information contains information that should be made available to the public in order to determine the environmental, social or human health impacts of the relevant project, the CEVO will inform the Bank's Director of Infrastructure Financing and Financial Services, who will notify the project sponsor that the designation of confidentiality with respect to that information is being withdrawn.
- (c) In the event of a withdrawal of a designation of confidentiality by the Bank, the project sponsor may withdraw its request for assistance or application for certification and financing prior to further action by the Bank, or may agree to the withdrawal of the designation of confidentiality with respect to that information.
- (d) Upon withdrawal of a request for assistance or application for certification and financing, the Bank shall not keep any copy of the request or application and shall not make public that it received such a request or application.

4.2 With respect to requests for confidentiality designations for information concerning government decision-making documents, the following procedures shall apply.

- (a) Upon receiving such request, the Bank shall immediately designate such information as confidential.
- (b) The Bank may not disclose such information unless all three members of the Board of Directors representing the federal government of the country in which the project is located approve such disclosure.

4.3 The following other categories of information shall not be made public unless otherwise designated for disclosure by the Bank's Managing Director or Board of Directors:

- (a) internal, pre-decisional deliberations or analyses, including all attorney-client communications or attorney work product, prepared by the Bank to assist the Bank in making a final decision on a particular matter;
- (b) internal Bank documents relating to Bank personnel, including performance reviews and other personal information; and
- (c) all documents prepared for discussion purposes for the Board of Directors at its meetings or documents prepared for discussion purposes for any committee of the Board of Directors, unless the Board of Directors explicitly states that all or part of these documents may be made available to the public.

ARTICLE V - APPEALS

5.1 A party whose request for documentary information pursuant to Chapter II, Article III, Section 14(a), of the Charter is denied in whole or in part by the Bank, may appeal such decision to the Board of Directors.

5.2 The appeal should be sent to the Chairperson of the Board of Directors, through the Bank's Managing Director, within thirty (30) days following receipt of the Bank's decision by the party making the request. The party appealing shall be notified that the appeal has been received and forwarded to the Chairperson of the Board of Directors. Appeals may be submitted to the Board of Directors in English or Spanish, and the Bank shall be allowed a reasonable time to translate the appeal into the other official language before the appeal is ready for consideration by the Board of Directors.

5.3 The Board of Directors shall strive to issue a decision concerning each appeal within thirty (30) days following receipt of the appeal and, if necessary, its translation. Before issuing a decision, the Board of Directors may confer on the appeal and may meet privately with the party submitting the appeal. Once the Board reaches a decision, it shall notify the parties involved of its reasons for making the decision, in writing and by certified mail.

5.4 The Board's determination with respect to the appeal shall be final.

ARTICLE VI - NONCOMPLIANCE AND SANCTIONS

6.1. If Bank officials or employees make any information designated as confidential available to a third party not covered by the relevant Bank non-disclosure agreement, the Bank's Managing Director may apply any of the following sanctions:

- (a) verbal warning;
- (b) written warning;
- (c) temporary suspension of employment without pay; or
- (d) termination of employment.

6.2 If the Bank's Managing Director, Deputy Managing Director, Chief Environmental Officer or any member of the Board of Directors makes any information designated as confidential available to a third party not covered by the relevant Bank non-disclosure agreement, the Board of Directors shall have sole jurisdiction over the issue and any sanctions to be applied.