

**Metropolitan Transportation Commission  
Programming and Allocations Committee**

October 11, 2023

Agenda Item 2f - 23-1159

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**MTC Resolution No. 4617. BART Railcar Replacement**

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**Subject:**

A request for approval of MTC Resolution No. 4617 adopting a project funding tax and regulatory agreement between MTC and Bay Area Rapid Transit (BART) and a regional transit project funding agreement between MTC and Bay Area Infrastructure Finance Authority (BAIFA).

**Background:**

Through regular updates to the Programming and Allocations Committee since 2018, staff have identified a financing strategy that addresses the need to replace the aged BART railcars while simultaneously addressing other operator needs to maintain vehicle and fixed guideway assets in a state of good repair. Financing of the BART Railcar Replacement project will enable the completion of this longstanding MTC commitment to achieve a state of good repair on BART's railcar fleet. Critically, it also enables investment through the Transit Capital Priorities (TCP) for simultaneous fleet needs, including the replacement of SFMTA's Light Rail Vehicle fleet, the replacement of buses and ferries throughout BART's service area, and replacement and rehabilitation of fixed guideway assets. In early 2019, as part of this regional strategy, MTC received a Letter of No Prejudice (LONP) from the Federal Transit Administration authorizing the use of financing backed by federal formula funds to purchase 669 BART Railcars (the Project). In early 2023, MTC requested and received another LONP from the FTA which provides, among other things, an extended amount of time through which financing backed by federal funds may be used for this Project. Through August 2023, over 470 of the Project's new rail cars have been delivered to BART and are being used by riders in revenue service. The financing will allow for the remaining Project cars to be purchased while not delaying other important investments in the region's vehicle fleet and fixed guideway assets.

MTC is the designated Metropolitan Planning Organization (MPO) responsible for programming FTA formula funds to regional transit projects. BART's fleet replacement and expansion requires significant funding over the next four to six years and the FTA formula grant funds

expected to be received during this period would be insufficient to meet the total cash flow requirements of this and other anticipated regional projects. Because delays in such projects could lead to notable cost escalation, and in order to complete all projects on a timely basis, intermediate funding will be required to address their cash flow needs.

Debt financing provides upfront project funds that can be repaid over time. MTC's role as MPO and direct recipient of federal funds allows it to flexibly program and allocate federal grant receipts for debt service. MTC allocates FTA formula funds to direct recipients (e.g., regional transit operators) and, as a direct recipient, MTC can receive programmed FTA formula funds. This puts MTC in a unique position to manage a regional program that can be used to address the type of cash flow challenges presented by the Project in the context of other regional needs.

The BART rail car replacement project is the largest Bay Area transit vehicle replacement project in the near term and a critical need in the region. BART is eligible for section 5307 and 5337 grants in multiple urbanized areas (UZAs); this provides a large amount of direct funding over an extended period which can in turn be used to secure a financing and provide significant debt service coverage (which allows for cost-effective borrowing). Per TCP Policy and FTA guidance, the Project itself is eligible for direct funding; further, debt service related to financing for the Project is eligible for funding, and is the highest priority in the TCP. The TCP establishes the UZAs that support the BART car replacement project.

MTC does not have its own financing authority, BAIFA, however, is a joint powers agency (JPA) established by MTC and BATA under a joint powers agreement, as permitted by state law. As a JPA, BAIFA can issue special obligation debt (as it has done in the past). In the planned financing, BAIFA and MTC would enter a transit funding agreement under which BAIFA would advance funds to BART to reimburse eligible Project expenditures. BAIFA debt would be repaid from FTA formula funds programmed annually by MTC, subject to federal appropriation and apportionment.

The contemplated financing structure could also be utilized by MTC to advance other projects on behalf of different transit operators, to the extent that a project presented similar cash flow challenges, subject to the future receipt of LONPs for such projects. The regional structure

enables MTC to leverage its expertise and role as MPO, and the structure can be customized to meet operator needs and can cross UZAs for applicable projects. The first financing would be for the BART rail car replacement program. There are no current plans to issue additional debt for other projects. The planned financing structure is a short-term bank revolving line of credit with a future fixed-rate takeout. This structure provides financing flexibility given the uncertainty of the exact timing of funding needs on a cost-effective basis.

MTC Resolution No. 4617 approves of the issuance by BAIFA of debt obligations in the amount of not to exceed four hundred fifty million dollars (\$450,000,000) for the BART rail car replacement program. It also approves of the form of and authorizes the execution of the Project Funding Tax and Regulatory Agreement between MTC and BART (BART T&R) and a Regional Transit Project Funding Agreement between MTC and BAIFA (RTPFA). The BART T&R sets forth the commitments of BART with respect to the use of BAIFA disbursement for the benefit of the BART rail car replacement project. In the RTPFA, MTC covenants to program FTA Formula Funds to pay its funding obligations in connection with BAIFA's debt obligations relating to the BART Project financing. Substantially final forms of the BART T&R and the RTPFA have been attached. A substantially final form of the Credit Agreement between BAIFA and Bank of America, N.A. has also been attached for reference.

A corresponding resolution will be before BAIFA on October 25, 2023. A discussion and presentation on the financing will be presented to BAIFA at that time.

**Next Steps:**

Staff will return to the MTC Board at its October 25, 2023 meeting for approval of Resolution No. 4617.

**Issues:**

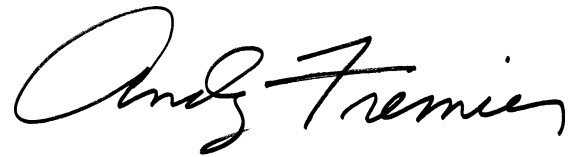
None identified.

**Recommendations:**

Refer MTC Resolution No. 4617 to the Commission for approval.

Attachment:

- MTC Resolution No. 4617
- Attachment A: Project Funding Tax and Regulatory Agreement between MTC and BART
- Attachment B: Regional Transit Project Funding Agreement between MTC and BAIFA
- Attachment C: Credit Agreement between BAIFA and Bank of America, N.A.



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Andrew B. Fremier

Date: October 25, 2023  
W.I.: 1512  
Referred by: PAC

## ABSTRACT

MTC Resolution No. 4617

This resolution authorizes the execution of a Regional Transit Project Funding Agreement, the Project Funding Tax and Regulatory Agreement and certain other documents by MTC in connection with the BART Rail Car Replacement Program and related BAIFA financing, and all necessary actions in connection therewith.

Discussion of this action is contained in the Programming and Allocations Committee summary sheets dated October 11, 2023.

Date: October 25, 2023  
W.I.: 1512  
Referred by: PAC

RE: Regional Transit Project Funding Agreement, the Project Funding Tax and Regulatory Agreement and certain other documents by MTC in connection with the BART Rail Car Replacement Program and related BAIFA financing

METROPOLITAN TRANSPORTATION COMMISSION  
RESOLUTION NO. 4617

WHEREAS, the Metropolitan Transportation Commission (the “Commission”) is the regional transportation planning agency for the nine counties of the San Francisco Bay Area (“Bay Area Region”) pursuant to Sections 66500, *et seq.*, of the California Government Code (“Government Code”); and

WHEREAS, the Commission is the designated “metropolitan planning organization” for the Bay Area Region (the “Bay Area MPO”), and is required to prepare, adopt, and periodically revise, pursuant to Sections 66508 and 65080 of the Government Code, a “regional transportation plan” (“RTP”); and

WHEREAS, pursuant to Section 450.300 of Title 23 of the Code of Federal Regulations, the Bay Area MPO is required to carry out a continuing, cooperative, and comprehensive transportation planning process as a condition to receiving federal assistance, resulting in the development of and updates to a “transportation improvement program” (“TIP”) that is consistent with the RTP, and which consists of a comprehensive listing of transportation projects that receive federal funds, including from the Federal Transit Administration (“FTA”), that are subject to a federally-required action, or that are regionally significant; and

WHEREAS, the Commission has been designated by the Governor of the State of California, with concurrence from the FTA, as the designated recipient of certain funds from the FTA (collectively, “FTA Formula Funds”) for certain urbanized areas in the Bay Area Region, which for purposes of the financing and refinancing authorized by the Amended Letter of No Prejudice with respect to the BART Project (as defined herein) received by the Commission from FTA, dated June 9, 2023 (the “MTC LONP”), include the Antioch, Concord-Walnut Creek,

Livermore-Pleasanton-Dublin and San Francisco-Oakland urbanized areas (“Participating UZAs”); and

WHEREAS, pursuant to Section 5303 of Chapter 53 of Title 49 of the United States Code, the Commission receives and apportions FTA Formula Funds in accordance with Section 5336 of Chapter 53 of Title 49 of the United States Code to the Participating UZAs for eligible projects included in the TIP (such projects, the “Eligible Projects”); and

WHEREAS, to carry out the Eligible Projects, the Commission programs FTA Formula Funds apportioned by the FTA to the Participating UZAs for the Eligible Projects and directs transit operators in the Participating UZAs to apply to the FTA for such funds subject to concurrence from the Commission; and

WHEREAS, the San Francisco Bay Area Rapid Transit District (“BART”), through its rail car replacement program, has contracted for the acquisition of up to 669 replacement railcars (the “BART Project”), as further described in a Project Funding Tax and Regulatory Agreement between the Commission and BART (the “BART T&R”), which is the only Eligible Project authorized to benefit from the financing contemplated by the MTC LONP; and

WHEREAS, as previously expressed in MTC Resolution No. 4123 and MTC Resolution No. 4126, Revised, the Commission desires to assist BART in obtaining funds as required for the BART Project; and

WHEREAS, to meet the delivery schedule for the BART Project, which will, among other things, benefit the transportation network in the Bay Area Region, the Commission desires to make more immediate funding available to BART, which has requested financial assistance for the BART Project; and

WHEREAS, the Commission has requested assistance from the Bay Area Infrastructure Financing Authority (the “Authority”), a public entity duly established and organized under the laws of the State of California, which was created pursuant to a joint exercise of powers agreement (the “Joint Powers Agreement”) entered into by the Commission and the Bay Area Toll Authority, to support the Commission’s regional transportation planning process by

facilitating the financing and refinancing of a portion of the costs of the BART Project by providing funds to the Commission and BART, including, as applicable, from the proceeds of a note to be issued pursuant to a resolution of the Authority (the “Authority Resolution”) and a credit agreement (the “Credit Agreement”) between the Authority and Bank of America, N.A. (collectively, the “BAIFA Obligations”), and payable by the Authority from certain FTA Formula Funds it receives from the Commission pursuant to a Regional Transit Project Funding Agreement (the “RTPFA”) between the Commission and the Authority; and

WHEREAS, the Authority desires and intends to assist the Commission and BART by providing financing and refinancing in the form of BAIFA Obligations to be used by BART for the BART Project; and

WHEREAS, pursuant to Section 6586.5 of the Government Code, the Commission has, prior to the consideration of this Resolution, held a public hearing on the financing of the BART Project, which hearing was held within the Counties of Alameda, Contra Costa, San Francisco, San Mateo and Santa Clara (collectively, the “Counties”) on the date of this Resolution, and made a finding of significant public benefit in accordance with the criteria specified in Section 6586; and

WHEREAS, there has been prepared and presented to the Authority proposed forms of RTPFA, BART T&R and Credit Agreement; and now therefore be it

RESOLVED, that the Metropolitan Transportation Commission (the “Commission”) hereby finds and determines that the foregoing recitals are true and correct; and be it further

RESOLVED, that the Commission hereby approves of the issuance by the Authority, from time-to-time, of BAIFA Obligations in accordance with the terms of the Authority Resolution and the Credit Agreement, and Section 6500, *et. seq.*, of the California Government Code, as applicable, bearing either taxable or tax-exempt fixed interest rates or variable interest rates, including interest rates that change over the life of such BAIFA Obligations;

provided, however, that



(A) the aggregate principal amount of BAIFA Obligations issued pursuant to the foregoing approval shall not exceed four hundred fifty million dollars (\$450,000,000);

and

(B) the BAIFA Obligations, which are payable by the Authority from certain FTA Formula Funds it receives from the Commission as programmed by the Commission to pay “MTC Funding Obligations” pursuant to the RTPFA and authorized hereby, shall not be issued after \_\_\_\_, 202\_\_ without further authorization by the Commission; and be it further

RESOLVED, that the Commission hereby approves of the form of the RTPFA, the BART T&R, and the Credit Agreement, and the Commission hereby authorizes and delegates authority to each Authorized Representative (as defined in the RTPFA) to execute and deliver, and the Secretary of the Commission to attest and deliver, if necessary, the RTPFA and the BART T&R in substantially the same forms presented to the Commission, with such additions thereto or changes therein as any Authorized Representative, with the advice of General Counsel to the Commission and bond counsel and tax counsel to the Authority, may require or approve (the approval of such additions or changes to be conclusively evidenced by the execution and delivery of the RTPFA and the BART T&R); and be it further

RESOLVED, that solely for purposes of establishing compliance with the requirements of Section 1.150-2 of the U.S. Treasury Regulations, the Commission hereby declares its official intent to use proceeds of BAIFA Obligations issued after the date of this resolution to reimburse itself; and be it further

RESOLVED, that the Chair of the Commission, the Vice Chair of the Commission, the Executive Director, the Chief Financial Officer and other appropriate officers of the Commission, be and hereby are authorized and directed, jointly and severally, for and in the name and on behalf of the Commission, in consultation with the General Counsel to the Commission, to execute and deliver each of the documents that is necessary or appropriate to

effect each of the transactions contemplated hereby, including, without limitation, any and all certificates, documents, amendments, instructions, notices, orders, representations and requests and to do any and all things and take any and all actions that may be necessary or advisable, in their discretion, to effectuate the actions that the Commission has approved in this Resolution and to carry out, consummate and perform the duties of the Commission set forth in the RTPFA, the BART T&R and all other documents executed in connection with BAIFA Obligations and the BART Project; and be it further

RESOLVED, that this Resolution shall take immediate effect from and after its adoption.

METROPOLITAN TRANSPORTATION COMMISSION

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Alfredo Pedroza, Chair

The above resolution was entered into by the Metropolitan Transportation Commission at a regular meeting of the Commission held in San Francisco, CA, and other remote locations on October 25, 2023

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**PROJECT FUNDING  
TAX AND REGULATORY AGREEMENT**

**Dated as of [DATE, 2023]**

By and Between

METROPOLITAN TRANSPORTATION COMMISSION,

And

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

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# **PROJECT FUNDING TAX AND REGULATORY AGREEMENT**

This **Project Funding Tax and Regulatory Agreement** dated as of [DATE, 2023] (as amended and supplemented hereafter, this “Agreement”) is made and entered between the Metropolitan Transportation Commission (“MTC”) and the San Francisco Bay Area Rapid Transit District (“BART”) and acknowledged by the Bay Area Infrastructure Financing Authority (including its successors and permitted assigns, “BAIFA”) (collectively, MTC and BART are referred to herein as the “Parties”). This Agreement is effective upon execution by MTC and BART (the “Effective Date”).

## **RECITALS**

MTC is the regional transportation planning agency for the nine-counties of the San Francisco Bay Area (“Bay Area Region”) pursuant to Sections 66500 et seq. of the California Government Code (“Government Code”); and

MTC is the designated “metropolitan planning organization” for the Bay Area Region (the “Bay Area MPO”), and is required to prepare, adopt, and periodically revise, pursuant to Sections 66508 and 65080 of the Government Code, a “regional transportation plan” (“RTP”); and

Pursuant to Section 450.300 of Title 23 of the Code of Federal Regulations, the Bay Area MPO is required to carry out a continuing, cooperative, and comprehensive transportation planning process as a condition to receiving federal assistance, resulting in the development of and updates to a “transportation improvement program” (“TIP”) that is consistent with the RTP, and which consists of a comprehensive listing of transportation projects that receive federal funds, including from the Federal Transit Administration (“FTA”), that are subject to a federally-required action, or that are regionally significant; and

MTC has been designated by the Governor of the State of California, with concurrence from the FTA, as the designated recipient of FTA Formula Funds (defined herein) for certain urbanized areas in the Bay Area Region, which for purposes of the financing authorized by the MTC LONP (defined herein) include the Antioch, Concord-Walnut Creek, Livermore-Pleasanton-Dublin and San Francisco-Oakland urbanized areas (“Participating UZAs”); and

Pursuant to Section 5303 of Chapter 53 of Title 49 of the United States Code, MTC receives and apportions FTA Formula Funds in accordance with Section 5336 of Chapter 53 of Title 49 of the United States Code to the Participating UZAs for eligible projects included in the TIP (“Eligible Projects”); and

To carry out the Eligible Projects, MTC programs FTA Formula Funds apportioned by the FTA to the Participating UZAs for the Eligible Projects and directs transit operators in the Participating UZAs to apply to FTA for such funds subject to concurrence from MTC; and

BART, through its Rail Car Replacement Program, has contracted for the acquisition of up to 669 replacement railcars, as further described in Exhibit A hereto (the “Project”), which is an Eligible Project; and

As previously expressed in MTC Resolution No. 4123 and MTC Resolution No. 4126, Revised, MTC desires to assist BART in funding the Project; and

In order to meet the delivery schedule for the Project, which will benefit the transportation network in the Bay Area Region, MTC desires to make more immediate funding available to BART, who has requested financial assistance for the Project; and

MTC has requested assistance from BAIFA to support MTC’s regional transportation planning process by facilitating the financing and refinancing of all or a portion of the costs of the Project by providing funds to BART, including, as applicable, from the proceeds of BAIFA Obligations (defined herein); and

Pursuant to that certain Regional Transit Project Funding Agreement, dated as of [DATE, 2023] the (“RTF Agreement”), by and between MTC and BAIFA, and consistent with the MTC LONP (defined herein), MTC has assigned and pledged Programmed Grant Receipts (defined herein) to secure and pay the MTC Funding Obligation (defined herein), including all related costs and reimbursements;

**NOW THEREFORE**, in order to provide funding for the Project described in Exhibit A hereto, the Parties agree as follows:

**Section 1. Definitions; Construction.**

(a) Definitions. In addition to the terms defined in the above recitals and elsewhere in this Agreement, the following terms are defined below.

**Agreement** means this Project Funding Tax and Regulatory Agreement, dated as of [DATE, 2023], by and between MTC and BART and acknowledged by BAIFA, as it may be amended from time to time.

**Authorized Representative** means (i) with respect to BART, the Controller/Treasurer of BART, the General Manager of BART, or other such representative of BART designated to act on behalf of BART by either such officer or by the BART Governing Board; (ii) with respect to MTC, the Executive Director of MTC or such representative or representatives of MTC designated to act on behalf of MTC by the Commissioners or the Executive Director of MTC; and (iii) with respect to BAIFA, the Executive Director of BAIFA, any Deputy Executive Director of BAIFA, the Treasurer of BAIFA, or any other employee, employees, representative or representatives of BAIFA designated to act on behalf of BAIFA by the board of BAIFA.

**BAIFA** means the Bay Area Infrastructure Financing Authority.

**BAIFA Authorizing Resolution** means the resolution(s) of BAIFA authorizing the issuance or incurrence, from time to time, of BAIFA Obligations, subject to the terms of this Agreement and the related BAIFA Financing Documents, in substantially the form presented to

the governing board of BAIFA and subject to the revisions approved by an Authorized Representative of BAIFA.

**BAIFA Disbursements** means amounts paid by BAIFA to MTC for further disbursement to BART, or to BART at the request and on behalf of MTC, all as subject to the terms of this Agreement, the MTC LONP and the other BAIFA Financing Documents, for costs of the Project paid or to be paid by BART

**BAIFA Financing Documents** means this Agreement, the BAIFA Authorizing Resolution, the RTF Agreement, the BART Project Loan Agreement, the MTC Written Designation, and any and all other certificates, letters agreements, and documents executed and delivered by BAIFA from time to time establishing the terms and conditions for the issuance, sale, execution, delivery, security, payment and administration of the BAIFA Obligations.

**BAIFA Obligations** means bonds, notes, certificates or other obligations, including, without limitation, variable rate debt obligations, commercial paper, revolving credit agreements, lines of credit (and extensions thereof), loans, leases, lease purchases, and other purchase agreements, that are entered into, issued or incurred from time to time by BAIFA, and payable by BAIFA from Programmed Grant Receipts received from MTC, for the purpose of providing proceeds to fund or refund BAIFA Disbursements or other BAIFA Obligations or to pay MTC for an MTC Debt Service Advance or MTC Project Disbursement, in each case pursuant to the terms of this Agreement, the MTC LONP and the other BAIFA Financing Documents, and all other financing costs, including but not limited to interest costs, costs of issuance, fees, service charges, commitment fees, and other costs relating thereto as specified in the BART Project Loan Agreement.

**BART** means the San Francisco Bay Area Rapid Transit District.

**BART Project Loan Agreement** means the Credit Agreement, dated as of [\_\_\_\_\_] 1, 2023 by and between BAIFA and the Lender, as it may be amended, modified and/or restated from time to time.

**BART Tax Certificate** means the tax certificate executed and delivered by BART pursuant to the terms of this Agreement.

**Bay Area Region** means the nine-counties of the San Francisco Bay Area for which MTC acts as the regional transportation planning agency.

**Code** means the Internal Revenue Code of 1986, as amended, including any implementing regulations and any administrative or judicial interpretations.

**Default** means an event which, with notice or lapse of time or both, would become an Event of Default.

**Effective Date** means [\_\_\_\_\_] , 2023, which is the date this Agreement takes effect.

**Event of Default** means the events described in Section 7(a) herein.

**Federal Fiscal Year** means the period of twelve months ending September 30 of each year, or any other annual period hereafter designated by the FTA as its fiscal year.

**FTA** means the United States Federal Transit Administration.

**FTA Formula Funds** means funds apportioned to Participating UZAs by FTA pursuant to the formulas set forth in Section 5336, Section 5337 or Section 5339, as applicable, of Chapter 53 of Title 49 of the United States Code, including, (i) Section 5307 Urbanized Area Formula Funding Program funds, (ii) Section 5337 State of Good Repair Program funds; and (iii) any other lawfully available grant or other funding program administered by FTA which provides funds to MTC and which MTC has irrevocably designated as FTA Formula Funds in an MTC Written Declaration.

**FTA Master Agreement** means the United States of America Department of Transportation Federal Transit Administration Master Agreement, as it may be amended, supplemented, restated or superseded from time to time, that sets forth the standard terms and conditions that apply to projects financed with federal funds awards, the terms and conditions of which are incorporated herein by reference.

**Lender** means Bank of America, N.A.

**MTC** means the Metropolitan Transportation Commission, acting in its capacity as the “designated recipient” as defined in Section 5302 of Chapter 53 of Title 49 of the United States Code for the Participating UZAs or its capacity as the designated “metropolitan planning organization” as defined in Section 5303 of Chapter 53 of Title 49 of the United States Code for the Bay Area Region, as applicable.

**MTC Debt Service Advance** means amounts transferred by MTC, in its sole discretion, to BAIFA or the Lender from funds that are lawfully available to MTC other than FTA Formula Funds, proceeds of BAIFA Obligations or MTC Project Disbursements, to provide funds to pay BAIFA Obligations, including interest and other financing costs for which sufficient Programmed Grant Receipts have not been otherwise transferred to BAIFA, and for which MTC shall be eligible under the terms of the MTC LONP to subsequently Program, and be reimbursed from, FTA Formula Funds and designated in writing by MTC as constituting an MTC Debt Service Advance.

**MTC Funding Obligation** means an amount equal to (i) the amount of the outstanding BAIFA Obligations, including interest and other financing costs, coming due and payable at any time during each Federal Fiscal Year, plus (ii) the amount of all other obligations coming due and payable under the BART Project Loan Agreement at any time in each such Federal Fiscal Year and, in each case, not paid from other lawfully available sources in such Federal Fiscal Year.

**MTC LONP** means the Amended Letter of No Prejudice with respect to the Project received by MTC from FTA, dated June 9, 2023, establishing eligibility of MTC Funding Obligations or BAIFA Obligations to be repaid with FTA Formula Funds and irrevocably designated as an MTC LONP for purposes of the MTC Written Designation pursuant to this Agreement, together with any amendments or supplements thereto.



**MTC Project Disbursements** means amounts paid by MTC to BART, from funds that are lawfully available to MTC other than FTA Formula Funds or proceeds of BAIFA Obligations, for payment of costs of the Project, and designated in writing by MTC as constituting an MTC Project Disbursement, provided that MTC shall be eligible under the terms of the MTC LONP to be subsequently reimbursed for such advances from Programmed Grant Receipts.

**MTC Written Designation** means a certificate of MTC in substantially the form attached to the RTF Agreement as Exhibit A delivered to BAIFA irrevocably designating the Programmed Grant Receipts and the MTC LONP for the benefit of BAIFA.

**Participating UZAs** means the UZAs of Antioch, Concord-Walnut Creek, Livermore-Pleasanton-Dublin and San Francisco-Oakland urbanized areas, and any successors thereto as contemplated in the MTC LONP.

**Parties** means MTC and BART.

**Program or Programming** means, consistent with MTC Resolution No. 4444, the San Francisco Bay Area Transit Capital Priorities Process and Criteria, for each Federal Fiscal Year during the term of this Agreement, MTC taking all actions necessary to: (i) prepare MTC's TCP program recommendations for approval by MTC, (ii) prepare MTC's TIP recommendation for approval by MTC; (iii) prepare and submit grant applications to FTA necessary to receive FTA Formula Funds from FTA for such Federal Fiscal Year in an amount sufficient to pay all BAIFA Obligations anticipated to become due and payable in such Federal Fiscal Year; and (iv) reprogram, to the extent permitted by law, available FTA Formula Funds appropriated in prior Federal Fiscal Years to the extent that as of the last Business Day of the current Federal Fiscal Year, the FTA Formula Funds required to make payment of BAIFA Obligations then due and payable from the current Federal Fiscal Year appropriations have not been received.

**Programmed Grant Receipts** means the portion of FTA Formula Funds that are received and Programmed by MTC to pay MTC Funding Obligations as provided in the RTF Agreement and in accordance with the MTC LONP.

**Project** means the acquisition by BART of 669 replacement railcars, as further described in Exhibit A hereto.

**Project Funding Sources** means the funds legally available to BART from federal, state and local sources to be used to finance the Project, including, but not limited to, legally available funds of BART, and other funds committed and programmed by MTC for the Project, but excluding the Programmed Grant Receipts and BAIFA Disbursements.

**RTP** means the Regional Transportation Plan described in Sections 65080 and 66508 of the California Government Code.

**RTF Agreement** means the Regional Transit Project Funding Agreement, dated as of [DATE, 2023], by and between MTC and BAIFA, as it may be amended from time to time.

**RTP** means the Regional Transportation Plan described in Sections 65080 and 66508 of the California Government Code.

**Substantial Completion** means the date BART certifies to MTC that the last vehicle of the Project has been accepted by BART.

**TCP** means MTC's Transit Capital Priorities process.

**TIP** means the Transportation Improvement Program developed by MTC in accordance with Section 450.300 of Title 23 of the Code of Federal Regulations.

**UZA** means "urbanized area" as defined in Section 5303 of Chapter 53 of Title 49 of the United States Code.

(b) Construction. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, to the singular include the plural and to the part include the whole. The word "including" shall be deemed to mean "including but not limited to," and the word "or" has the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The Section headings contained in this Agreement and the table of contents preceding this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in any respect. Section, subsection and exhibit references are to this Agreement unless otherwise specified. Unless otherwise specified, defined terms referencing any entity shall include its successors and assigns, as applicable, and defined terms referencing any federal program, statute, regulation, code section or other law shall include all successors or replacements therefor.

(c) Accounting Terms. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with Generally Accepted Accounting Principles applicable to government entities in the United States.

## **Section 2. Purpose; Programmed Grant Receipts; BAIFA Obligations.**

(a) Purpose of Agreement. This Agreement sets forth the commitments of BART with respect to the use of BAIFA Disbursements for the benefit of the Project, subject to any terms and conditions set forth in the FTA Master Agreement and the MTC LONP.

(b) BAIFA Obligations; MTC Project Disbursements; MTC Funding Obligation. Pursuant to the terms of the RTF Agreement, MTC will cause BAIFA to issue or incur BAIFA Obligations, in one or more series, from time to time, subject to the provisions of the BAIFA Authorizing Resolution and the BART Project Loan Agreement, in order to provide moneys to (i) fund BAIFA Disbursements requested by BART, (ii) refund BAIFA Obligations, and (iii) pay MTC for any MTC Project Disbursement not previously reimbursed.

The MTC Funding Obligation established under the RTF Agreement shall be secured by and payable from the Programmed Grant Receipts and shall be subject to the terms and conditions of the RTF Agreement and the BART Project Loan Agreement.

(c) Programmed Grant Receipts. Pursuant to the RTF Agreement, MTC pledges to BAIFA a security interest in and lien on its right, title and interest, whether now held or in the future acquired by it and whether now existing or in the future coming into existence and wherever located, in and to the Programmed Grant Receipts to secure and pay the MTC Funding Obligation arising in connection with the funding or refunding of BAIFA Disbursements or other BAIFA Obligations, or paying MTC for an MTC Project Disbursement.

BART acknowledges and agrees that, in consideration of receipt of BAIFA Disbursements relating to the Project, it has no right, title or interest in such Programmed Grant Receipts.

### **Section 3. BAIFA Obligation Proceeds; Disbursement.**

(a) Disbursements Timing. BART will provide written notice to MTC of its anticipated need for the initial BAIFA Disbursement no sooner than 90 days prior to submittal of such request.

(b) Requisition and Use of BAIFA Disbursements. Pursuant to the terms of this Agreement, BART may request BAIFA Disbursements for costs incurred by BART for the Project from time to time by delivering a requisition in the form attached hereto as Exhibit B, executed by an Authorized Representative. Upon receipt and approval by MTC of such written requisition, and subject to the satisfaction of the conditions to disbursement set forth in this Agreement, BAIFA shall deliver a requisition to the Lender in accordance with the terms of the BART Project Loan Agreement and the Lender shall cause BAIFA Disbursements to be disbursed pursuant to the terms of the BART Project Loan Agreement to BAIFA for payment to BART, such disbursement to be within five (5) business days of receipt of the requisition. MTC may, in its sole discretion, choose to make an MTC Project Disbursement to BAIFA to fund the BAIFA Disbursement.

Eligible costs of the Project payable from BAIFA Disbursements shall be invoiced on a reimbursable basis. BART may not submit requests for reimbursement more frequently than monthly. For each Federal Fiscal Year in which Project expenditures are incurred, BART shall invoice at least once in that Federal Fiscal Year.

(c) Conditions to Disbursements. MTC has no obligation to disburse or cause to be disbursed BAIFA Disbursements, including proceeds of BAIFA Obligations, unless BART certifies in its written request of the Authorized Representative for disbursement that all of the following are true and correct on the date of such request:

- (i) There is no existing and continuing Default or Event of Default.
- (ii) BART is in compliance with BART Tax Certificate.
- (iii) BART has maintained the eligibility of the Project for FTA Formula Funds consistent with the FTA Master Agreement.
- (iv) The costs to be reimbursed or paid constitute eligible costs consistent with the FTA Master Agreement.

(v) BART has not received reimbursement from FTA Formula Funds or other FTA grant funds for the costs it is requesting reimbursement for from BAIFA Disbursements.

(vi) BART is in compliance with all federal requirements for grant recipients as specified in the FTA Master Agreement.

(vii) Such disbursement complies with all applicable laws at the time of disbursement.

#### **Section 4. BART Rights and Obligations.**

(a) Compliance with Legal Requirements. BART shall comply with all applicable laws, rules, regulations and orders of any federal or state governmental authority that are required for the continued disbursement of FTA Formula Funds in connection with the Project, including without limitation any environmental clearances and contract procurement rules.

(b) Federal Funding Requirements. BART shall take all actions in a timely manner that the FTA requires under the FTA Master Agreement to maintain the eligibility of the Project to receive FTA Formula Funds.

(c) BAIFA Obligation Issuance. BART shall cooperate with MTC to facilitate the issuance and sale or other incurrence of BAIFA Obligations, including providing any information and executing and delivering such documents as MTC and BAIFA may reasonably request as set forth in Section 5(a) hereof in connection with the sale and issuance or incurrence of the BAIFA Obligations from time to time.

(d) BART Tax Certificate. BART shall deliver a BART Tax Certificate in connection with the issuance of any BAIFA Obligations related to the Project the interest on which is excludable from the gross income of the holders for federal income tax purposes and comply with the terms thereof.

(e) Project; Project Funding Sources. BART shall use the BAIFA Disbursements it receives to reimburse expenditures it has made to design, construct, acquire and equip the Project in a manner that is consistent with, and advances, the TIP. Consistent with the agreements set forth in MTC Resolution No. 4123 and MTC Resolution No. 4126, BART shall contribute or cause to be contributed Project Funding Sources necessary to finance its portion of the costs of the Project that exceed total BAIFA Disbursements for the Project. Within ninety (90) days of the Substantial Completion Date, BART shall provide to MTC an interim report detailing all BAIFA Disbursements and all other Project Funding Sources that were used to finance the costs of the Project through the Substantial Completion Date. Within one (1) year following the final requisition from BART for a BAIFA Disbursement, BART shall provide to MTC a final report detailing all BAIFA Disbursements and all other Project Funding Sources that were used to finance the costs of the Project through Project completion.

(f) Financial Records. BART shall keep accurate books and records setting forth the use of the BAIFA Disbursements and Project Funding Sources used to finance the Project and from any other sources. All books and records of BART shall be maintained according to

generally accepted accounting principles established by the Governmental Accounting Standards Board from time to time. BART agrees to allow MTC to conduct (at MTC's expense) an annual audit of such books and records relating to the use of the BAIFA Disbursements and Project Funding Sources used to finance the Project. In addition to the annual audit, upon written request of the Authorized Representative of MTC or the FTA, BART shall make available for review all books and records concerning the Project.

(g) Limited Obligations. The financing of the Project with BAIFA Disbursements as provided herein does not entail the incurrence of any obligation or liability payable from sources other than the BAIFA Disbursements and Programmed Grant Receipts relating to the Project. The MTC Funding Obligations and BAIFA Obligations are not liabilities of BART.

**Section 5. Representations, Warranties and Covenants of BART.** BART represents, warrants and covenants to MTC:

(a) Project Disclosure. The Board of Directors of BART has reviewed and authorized the disclosure regarding the Project in the form attached as Exhibit C, with such changes, insertions and omissions as may be approved by an Authorized Representative of BART in connection with the sale and issuance or incurrence of BAIFA Obligations from time to time, to be evidenced by the execution by an Authorized Representative of a certificate stating that such Project disclosure is true and accurate in all material respects, and that BART has disclosed to MTC all facts within its knowledge as of the date of such certificate that could reasonably materially adversely affect the Project or its eligibility to receive FTA Formula Funds.

(b) Pending Litigation. BART has disclosed in writing to MTC all proceedings pending (or, to the knowledge of BART, threatened) against BART, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the eligibility of the Project to receive FTA Formula Funds, or the application of BAIFA Disbursements and Project Funding Sources.

(c) No Defaults.

(i) No Defaults or Events of Default exist and are continuing or will occur upon the authorization, execution or delivery of this Agreement.

(ii) BART has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or related FTA Formula Funds or Project Funding Sources may be bound, that would materially adversely affect the Project, the Programmed Grant Receipts, the application of BAIFA Disbursements and Project Funding Sources to the Project, or the ability of BART to perform all obligations required by this Agreement.

(d) Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Agreement will not: (i) cause a breach of a material agreement, indenture, mortgage, deed of trust, or other instrument, to which BART is a party or by which the Project or any of BART's property or assets may be bound; (ii) violate any provision of the bylaws or other document or agreement pursuant to

which BART was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to BART, the Project or BART's properties or operations.

(e) Governmental Consent. BART represents that it has the ability to perform all obligations required of it by this Agreement. BART has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Agreement and undertaking, completion and operation of the Project.

(f) Representations and Covenants Regarding Tax-Exempt Status. BART acknowledges that BAIFA, in consultation with MTC, has or may issue or incur BAIFA Obligations in connection with the Project. BART further acknowledges that for those BAIFA Obligations issued or incurred the interest on which is excludable from the gross income of the holders for federal income tax purposes, the uses of the related BAIFA Disbursements under this Agreement for the Project by BART during the term of the BAIFA Obligations can impact the tax-exempt status of such BAIFA Obligations. BART agrees to comply in all respects with the provisions of any BART Tax Certificate.

(g) Notice of Default. BART, through its Authorized Representative, shall give MTC prompt written notice of any Default as soon as any senior administrative or financial officer of BART becomes aware of its existence or reasonably believes a Default is likely.

(h) Negative Covenants. BART shall not, without the prior written consent of the Authorized Representative of MTC:

(i) Cease to operate or modify the operations of the Project or take any action such that the Project no longer qualifies for FTA Formula Funds.

(ii) Take any action that would result in the Project no longer qualifying for FTA Formula Funds, including without limitation any action that would constitute a breach of the terms of the FTA Master Agreement resulting in such loss of qualification.

## **Section 6. Obligations of MTC.**

(a) Precedence of Funds. During the term of this Agreement, the Programming of the Programmed Grant Receipts to secure and pay the amounts due and payable on the outstanding MTC Funding Obligations during each Federal Fiscal Year during the term of this Agreement shall have precedence over the Programming of FTA Formula Funds by MTC to other projects in the applicable Bay Area UZAs as provided in the RTF Agreement. MTC shall keep appropriate records as required by the FTA of the MTC Funding Obligations and the Programming of Programmed Grant Receipts for payment of the MTC Funding Obligations.

## **Section 7. Default and Remedies.**

(a) Events of Default. Any of the following constitutes an "Event of Default" by BART:

(i) Any false or misleading representation is made by or on behalf of BART in this Agreement, or any false or misleading representation is made by or on behalf of BART in any requisition or in any document relating thereto provided by BART to MTC that would have a material adverse effect on the eligibility of the Project for FTA Formula Funds or on the ability of MTC to Program Programmed Grant Receipts.

(ii) The FTA makes a final determination that BART has failed to maintain the eligibility of the Project for FTA Formula Funds.

(iii) BART fails to perform any obligation required under this Agreement, including without limitation failure to comply with the tax covenants set forth in Section 5(f) hereof, and that failure continues for a period of ninety (90) calendar days after the date on which BART (a) has actual knowledge of such failure or (b) receives written notice specifying such failure from an Authorized Representative of MTC or BAIFA, provided that no Event of Default shall occur during such time as BART has instituted and is diligently pursuing corrective action or for such period of time as an Authorized Representative of MTC may reasonably agree.

Neither BART nor MTC shall be responsible for a failure by the United States Congress or the FTA to comply with the terms of the MTC LONP or otherwise budget or allocate sufficient funds in a timely manner to pay BAIFA Obligations, and such failures shall not constitute, nor be deemed to constitute, an Event of Default hereunder.

(b) Remedies. Upon any Event of Default, MTC may pursue any or all remedies in this Agreement, and any other remedies available at law or in equity (including specific performance) to enforce the performance of any obligation of BART. Remedies may include, but are not limited to:

(i) A suit for mandamus to enforce the covenants of BART set forth herein.

(ii) Terminating MTC's commitment and obligation to make any further disbursements of BAIFA Disbursements under this Agreement and the BART Project Loan Agreement.

(iii) Withholding any FTA Formula Funds otherwise due to BART from MTC which are legally available to be applied to the payment of amounts due on the BAIFA Obligations or otherwise due under the terms of this Agreement.

(iv) Upon the occurrence of an Event of Default under Section 7(a)(ii), such default shall require (i) BART to negotiate with FTA a proposed settlement to allow FTA Formula Funds to be used to pay MTC Funding Obligations, (ii) BART to allocate other available Project Funding Sources to the ineligible costs thereby enabling the reimbursement of the BAIFA Disbursements from such other Project Funding Sources or (iii) BART, with the cooperation of MTC, to use its best efforts to execute a refinancing of the MTC Funding Obligations relating to the Project from other legally available sources;

notwithstanding the foregoing, the provisions of this Section 7(b)(iv) shall not limit any remedies MTC may have available at law or in equity.

BART will be liable for MTC's reasonable attorney's fees and expenses in exercising its remedies hereunder.

(c) No Remedy Exclusive; Waiver; Notice. No remedy available to MTC is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right, power or privilege under this Agreement will preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. MTC is not required to provide any notice in order to exercise any right or remedy, except as set forth in Sections 7(a)(iii) and 7(b).

(d) Default by MTC; Remedies of BART. In the event MTC defaults on any obligation in this Agreement, BART's remedy will be limited to injunction, action for specific performance, mandamus, or other available equitable remedy for performance of MTC's obligations. In such event or in the event BART incurs any liability or is subject to any claim due to BAIFA's financing or to the FTA rejecting any request for Programmed Grant Receipts, unrelated to Project eligibility, MTC will be liable for BART's reasonable attorney's fees and expenses.

## **Section 8. General Provisions**

(a) Term. This Agreement shall be effective on the Effective Date and shall terminate when the total commitment of Programmed Grant Receipts related to the Project have been paid to MTC or BAIFA; provided that reports with respect to the Project expenditures will not be required after the fifth anniversary of the Substantial Completion Date per FTA requirements.

(b) Further Actions. Each Party shall diligently fulfill the duties assigned to it under this Agreement, including executing and delivering all such documents and instruments as shall be required to enable the Parties to perform their respective obligations hereunder, and to give effect to the transactions contemplated by this Agreement.

(c) Severability. The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal, or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid unless the exclusion of the particular term or provision held to be invalid would defeat the purposes of this Agreement in which case the Parties shall negotiate in good faith to modify this Agreement to give effect to the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(d) Assignment. The Parties agree that neither Party may assign any of the responsibilities under this Agreement without the written consent of the other Party.



(e) No Construction Against Drafter. This Agreement is to be construed as if the Parties drafted it jointly.

(f) Third Party Beneficiaries. MTC and BART are the only Parties entitled to enforce the terms of this Agreement, and nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right to any third party. Notwithstanding the foregoing and after review of the credit agreements by BART, the Lender and any providers of credit enhancements for the BAIFA Obligations, shall be third party beneficiaries to the representations and agreements set forth in this Agreement; *provided that*, notwithstanding anything to the contrary, remedies exercisable by third parties, if any, shall in no event exceed the scope of remedies allowed to the respective Parties under this Agreement, including without limitation as provided in Section 7 hereof, nor shall the liability of any Party in any event be in excess of the limits of liability specified herein, including without limitation in Section 7 hereof.

The Parties hereby consent and agree that BAIFA may, and shall, assign, pledge and grant to the Lender, for the benefit of the owners of the BAIFA Obligations, a security interest in and lien on this Agreement.

(g) No Set-Off. Except as otherwise provided in Section 7(b), if a dispute arises between the Parties, MTC agrees that so long as the BAIFA Obligations are outstanding and the funding commitment of Lender under the BART Project Loan Funding has not terminated it shall not take any action that would reduce the amounts that are to be applied under this Agreement to the Project as a set-off for damages MTC may claim it is owed.

(h) Notices. All notices to be given under this Agreement must be in writing and addressed as shown below, or to other addresses that either Party may hereafter indicate pursuant to this Section. Notices may be delivered by personal delivery or mailed, postage prepaid. Any such notice is effective five calendar days after mailing, or upon actual delivery if personally delivered.

**Metropolitan Transportation Commission**

Bay Area Metro Center  
375 Beale Street, Suite 800  
San Francisco, California 94105  
Attention: Chief Financial Officer  
Phone: (415) 778-6700  
Fax: (415) 536-9815  
dhansel@bayareametro.gov

San Francisco Bay Area Rapid Transit  
300 Lakeside Dr., 23<sup>rd</sup> Floor  
Oakland, CA 94612-3534  
Attention Assistant Controller  
Phone: (510) 464-6960  
Fax: (510) 464-6070  
cgan@bart.gov

(i) Entire Agreement. This Agreement (including all exhibits, schedules or attachments) constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement (including all exhibits, schedules or attachments). No waiver, consent, modification, or change of terms of this Agreement shall bind either Party unless in writing and signed by the Authorized Representative of both Parties and all necessary approvals have been obtained. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given.

(j) Amendments; Waivers. This Agreement may not be amended without the prior written consent of the Authorized Representative of MTC and BART. This Agreement may not be amended in a manner that is not in compliance with applicable State and federal laws or, to the extent the interest on BAIFA Obligations is intended to be excludable from gross income, the provisions of the Code applicable to obligations bearing interest that is excludable from gross income. No waiver or consent is effective unless in writing and executed by the Authorized Representative of the Party against whom such waiver or consent is sought to be enforced and the Lender. Such waiver or consent will be effective only in the specific instance and for the specific purpose given. In the event that federal rules or federal laws change in a manner that affects the administration of this Agreement, the BAIFA Disbursements, BAIFA Obligation proceeds, outstanding BAIFA Obligations, or the payment of debt service on the BAIFA Obligations, the Parties, in consultation with the Lender, whose consent shall not be unreasonably withheld, shall negotiate in good faith to amend or modify this Agreement to give effect to the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(k) Choice of Law; Designation of Forum; Federal Forum. The laws of the State of California (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement. Any Party bringing a legal action or proceeding against any other Party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Superior Court of California County of San Francisco (unless California law requires that it be brought and conducted in another county). Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum. Notwithstanding the above, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the Northern District of California.

(l) Execution in Counterparts. . This Agreement may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

*[Remainder of Page Blank; Signatures on Next Page]*

IN WITNESS WHEREOF, the Parties hereby acknowledge that they have the authority granted by their respective governing body to execute this Agreement and hereto have set their hands and affixed their seals as of the Effective Date.

**METROPOLITAN TRANSPORTATION  
COMMISSION**

**SAN FRANCISCO BAY AREA RAPID  
TRANSIT DISTRICT**

By \_\_\_\_\_  
Andrew B. Fremier, Executive Director

By

**ACKNOWLEDGED BY BAY AREA  
INFRASTRUCTURE FINANCING  
AUTHORITY**

By \_\_\_\_\_  
Derek Hansel, Treasurer  
Date \_\_\_\_\_

## **EXHIBIT A**

### **PROJECT DESCRIPTION**

#### **Rail Vehicle Replacement Program**

On May 10, 2012, the Board of Directors authorized the award of a contract to Bombardier Transit Corporation (“Bombardier”) for the procurement of cars to replace and expand BART’s revenue fleet. The base contract provides for the design, engineering, manufacturing, testing, management and support of 260 heavy rail transit vehicles, with several options to procure additional vehicles thereafter, including two options for 150 vehicles, one option for 115 vehicles, and one option for 100 vehicles. On May 30, 2012, the District awarded the base contract for 260 vehicles, and on June 25, 2012 the District exercised Option 1 to procure an additional 150 vehicles. The District exercised options for an additional 365 vehicles on December 27, 2013 for a total purchase of 775 vehicles, comprised of 310 “D” (control cab-equipped) and 465 “E” (non-control) cars.

The total project cost for the 775 vehicles will be approximately \$2.584 billion and will be paid from funding sources including funds from MTC, the VTA, and from BART itself.

669 of the vehicles are the Project for purposes of this Agreement.

Attached hereto and made part of this Exhibit A is the railcar procurement contract between BART and Bombardier.

**EXHIBIT B**

**FORM OF WRITTEN REQUISITION OF BART**

Exhibit B:  
Sample Form of Written Requisition of the Operator

Vendor: (Name)  
(Address)  
(City, State Zip)

Date:

Metropolitan Transportation Commission  
375 Beale Street, Suite 800  
San Francisco, CA 94105  
Attn: Accounts Payable

**Re: Request for Reimbursement from FTA Financing Proceeds**

<b>For project:</b> (Attach progress reports on a quarterly basis) (provide description of project)		<b>Period Covered by this Invoice:</b> (indicate months )						
<b>Expenses:</b>	<b>Prior Life</b>					<b>Quarter</b>	<b>Life to</b>	
	<b>Rate</b>	<b>To Date*</b>	<b>(Month)</b>	<b>(Month)</b>	<b>(Month)</b>	<b>Subtotal</b>	<b>Date Costs**</b>	<b>Budget</b>
1. Direct Salaries						-	-	
2. Direct Benefits						-	-	
3. Overhead (please specify rate 0 - .5)						-	-	
4. Direct Capital Costs (please specify)								
5. Consultant(s) (please list & attach invoices)							-	
6. Other (please specify)							-	
<b>Total amount due:</b>								
<b>Notes:</b>								
Other funding sources***								

\* Prior life to date means inception to date costs through the previous month  
 \*\* Life to date means inception to date for capital activities  
 \*\*\* include costs for all other funding sources

Exhibit B:  
Sample Form of Written Requisition of the Operator

Vendor: (Name)  
(Address)  
(City, State Zip)

Date:

Metropolitan Transportation Commission  
375 Beale Street, Suite 800  
San Francisco, CA 94105  
Attn: Accounts Payable

**Re: Request for Reimbursement from FTA Financing Proceeds**

Conditions to Disbursement

**(Operator) certifies that all of the following are true and correct:**

---

- There is no existing and continuing Default or Event of Default.
- (Operator) is in compliance with the Operator Tax Certificate.
- The representations and warranties made by (Operator) in the Regional Transit Funding Tax and Regulatory Agreement are true and correct as if made on such date.
- (Operator) has maintained the eligibility of the (Operator Project) for FTA Formula Funds consistent with the FTA Master Agreement.
- The costs to be reimbursed constitute eligible costs consistent with the FTA Master Agreement.
- (Operator) has not received reimbursement from FTA Formula Funds or other FTA grant funds for the costs it is requesting reimbursement for from BAIFA Advances.
- (Operator) has not used proceeds of other tax-exempt obligations to pay for the costs it is requesting reimbursement for from the proceeds of BAIFA Obligations the interest on which is excludable from the gross income of the holders for federal income tax purposes.
- (Operator) is in compliance with all federal requirements for grant recipients as specified in the FTA Master Agreement.
- Such disbursement complies with all applicable laws at the time of disbursement.

## EXHIBIT C

### FORM OF PROJECT DISCLOSURE

***BART Project and General Information About BART.*** BART is currently replacing its 669-car fleet of rail cars which are beyond their useful life, while also growing the fleet to 775, with plans to eventually expand to up to 1,200 rail cars. The 775 rail car procurement is underway, with Alstom (formerly Bombardier, which Alstom acquired in January 2021) designing, manufacturing, assembling, testing, delivering, and commissioning the new rail cars. [As of [September 1, 2023], [296] cars are on site on BART's property, with [286] having received final approval to enter revenue service.] [NTD: BART To Provide Updates]

According to information provided by BART, the total cost of the Project is estimated to be approximately \$2.5 billion. MTC has committed to provide approximately \$1.7 billion of the funding for the project from a combination of regional and federal sources, including \$359 million of pay-as-you-go FTA formula funds, \$843 million of financing proceeds paid by future FTA formula funds, and \$516 million of other regionally-controlled sources. The remaining costs of the Project, approximately \$866 million is funded by BART funds, Santa Clara Valley Transportation Authority funds, and other state grants.



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**REGIONAL TRANSIT PROJECT FUNDING AGREEMENT**

By and Between

METROPOLITAN TRANSPORTATION COMMISSION,

And

BAY AREA INFRASTRUCTURE FINANCING AUTHORITY

Dated as of [\_\_\_\_\_] 1, 2023

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# REGIONAL TRANSIT PROJECT FUNDING AGREEMENT

This **Regional Transit Project Funding Agreement** (“Agreement”) is made and entered between the **Metropolitan Transportation Commission** (“MTC”) and the **Bay Area Infrastructure Financing Authority** (“BAIFA” and, together with MTC, the “Parties”).

## RECITALS

MTC is the regional transportation planning agency for the nine-counties of the San Francisco Bay Area (“Bay Area Region”) pursuant to Sections 66500 et seq. of the California Government Code (“Government Code”); and

MTC is the designated “metropolitan planning organization” for the Bay Area Region (the “Bay Area MPO”), and is required to prepare, adopt, and periodically revise, pursuant to Sections 66508 and 65080 of the Government Code, a “regional transportation plan” (“RTP”); and

Pursuant to Section 450.300 of Title 23 of the Code of Federal Regulations, the Bay Area MPO is required to carry out a continuing, cooperative, and comprehensive transportation planning process as a condition to receiving federal assistance, resulting in the development of and updates to a “transportation improvement program” (“TIP”) that is consistent with the RTP, and which consists of a comprehensive listing of transportation projects that receive federal funds, including from the Federal Transit Administration (“FTA”), that are subject to a federally-required action, or that are regionally significant; and

MTC has been designated by the Governor of the State of California, with concurrence from the FTA, as the designated recipient of FTA Formula Funds (defined herein) for certain urbanized areas in the Bay Area Region, which for purposes of the financing authorized by the MTC LONP (defined herein) include the Antioch, Concord-Walnut Creek, Livermore-Pleasanton-Dublin and San Francisco-Oakland urbanized areas (“Participating UZAs”); and

Pursuant to Section 5303 of Chapter 53 of Title 49 of the United States Code, MTC receives and apportions FTA Formula Funds in accordance with Section 5336 of Chapter 53 of Title 49 of the United States Code to the Participating UZAs for eligible projects included in the TIP (“Eligible Projects”); and

To carry out the Eligible Projects, MTC programs FTA Formula Funds apportioned by the FTA to the Participating UZAs for the Eligible Projects and directs transit operators in the Participating UZAs to apply to FTA for such funds subject to concurrence from MTC; and

BART (as defined herein), through its rail car replacement program, has contracted for the acquisition of up to 669 replacement railcars, as further described in Exhibit A to the BART T&R Project Funding Agreement (as defined herein) (the “BART Project”), which is the only Eligible Project authorized to benefit from the financing contemplated by the MTC LONP (defined herein); and

As previously expressed in MTC Resolution No. 4123 and MTC Resolution No. 4126, Revised, MTC desires to assist BART in obtaining funds as required for the BART Project; and

In order to meet the delivery schedule for the BART Project, which will benefit the transportation network in the Bay Area Region, MTC desires to make more immediate funding available to BART, who has requested financial assistance for the BART Project; and

MTC has requested assistance from BAIFA to support MTC's regional transportation planning process by facilitating the financing and refinancing of all or a portion of the costs of the BART Project by providing funds to BART, including, as applicable, from the proceeds of BAIFA Obligations (defined herein); and

Pursuant to this Agreement and consistent with the MTC LONP (defined herein), MTC covenants to program FTA Formula Funds to pay the MTC Funding Obligation (defined herein), including all related costs and reimbursements, and to pay and assign to BAIFA the Programmed Grant Receipts (each as defined herein);

**NOW THEREFORE**, in consideration of the foregoing and the Parties' promises set forth in this Agreement, the Parties agree as follows:

**Section 1. Definitions; Construction.**

(a) **Definitions.** In addition to the terms defined in the above recitals and elsewhere in this Agreement, the following terms are defined below.

**Agreement** means this Regional Transit Project Funding Agreement, dated as of the Effective Date, by and between MTC and BAIFA, as may be amended from time to time.

**Authorized Representative** means (i) with respect to MTC, the Executive Director of MTC or such representative or representatives of MTC designated to act on behalf of MTC by the Commissioners or the Executive Director of MTC; and (ii) with respect to BAIFA, the Executive Director of BAIFA, any Deputy Executive Director of BAIFA, the Treasurer of BAIFA, or any other employee, employees, representative or representatives of BAIFA designated to act on behalf of BAIFA by the board of BAIFA.

**BAIFA** means the Bay Area Infrastructure Financing Authority.

**BAIFA Authorizing Resolution** means the resolution(s) of BAIFA authorizing the issuance or incurrence, from time to time, of BAIFA Obligations, subject to the terms of this Agreement and the related BAIFA Financing Documents, in substantially the form presented to the governing board of BAIFA and subject to the revisions approved by an Authorized Representative of BAIFA.

**BAIFA Disbursements** means amounts paid by BAIFA to MTC for further disbursement to BART, or to BART at the request and on behalf of MTC, all as subject to the terms of this Agreement, the MTC LONP and the other BAIFA Financing Documents, for costs of the BART Project paid or to be paid by BART.

**BAIFA Financing Documents** means this Agreement, the BAIFA Authorizing Resolution, the BART T&R Project Funding Agreement, the BART Project Loan Agreement, the MTC Written Designation, and any and all other certificates, letters agreements, and documents executed and delivered by BAIFA from time to time establishing the terms and conditions for the issuance, sale, execution, delivery, security, payment and administration of the BAIFA Obligations.

**BAIFA Obligations** means bonds, notes, certificates or other obligations, including, without limitation, variable rate debt obligations, commercial paper, revolving credit agreements, lines of credit (and extensions thereof), loans, leases, lease purchases, and other purchase agreements, that are entered into, issued or incurred from time to time by BAIFA, and payable by BAIFA from Programmed Grant Receipts received from MTC, for the purpose of providing proceeds to fund or refund BAIFA Disbursements or other BAIFA Obligations or to pay MTC for an MTC Debt Service Advance or MTC Project Disbursement, in each case pursuant to the terms of this Agreement, the MTC LONP and the other BAIFA Financing Documents, and all other financing costs, including but not limited to interest costs, costs of issuance, fees, service charges, commitment fees, and other costs relating thereto as specified in the BART Project Loan Agreement.

**BART** means the San Francisco Bay Area Rapid Transit District.

**BART Project** means the acquisition by BART of 669 replacement railcars, as further described in Exhibit A to the BART T&R Project Funding Agreement.

**BART Project Loan Agreement** means the Credit Agreement, dated as of [\_\_\_\_\_] 1, 2023 by and between BAIFA and the Lender, as it may be amended, modified and/or restated from time to time.

**BART T&R Project Funding Agreement** means the Project Funding Tax and Regulatory Agreement, dated as of [\_\_\_\_\_] 1, 2023 by and between MTC and BART, and acknowledged by BAIFA, as it may be amended, modified and/or restated from time to time.

**Bay Area Region** means the nine-counties of the San Francisco Bay Area for which MTC acts as the regional transportation planning agency.

**Code** means the Internal Revenue Code of 1986, as amended, including any implementing regulations and any administrative or judicial interpretations.

**Effective Date** means [\_\_\_\_\_] 1, 2023, which is the date this Agreement takes effect.

**Event of Default** has the meaning ascribed to such term in Section 6(a) of this Agreement.

**Federal Fiscal Year** means the period of twelve months ending September 30 of each year, or any other annual period hereafter designated by the FTA as its fiscal year.

**FTA** means the United States Federal Transit Administration.

**FTA Formula Funds** means funds apportioned to Participating UZAs by FTA pursuant to the formulas set forth in Section 5336, Section 5337 or Section 5339, as applicable, of Chapter 53 of Title 49 of the United States Code, including, (i) Section 5307 Urbanized Area Formula Funding Program funds, (ii) Section 5337 State of Good Repair Program funds; and (iii) any other lawfully available grant or other funding program administered by FTA which provides funds to MTC and which MTC has irrevocably designated as FTA Formula Funds in an MTC Written Declaration.

**FTA Master Agreement** means the United States of America Department of Transportation Federal Transit Administration Master Agreement, as it may be amended, supplemented, restated or superseded from time to time, that sets forth the standard terms and conditions that apply to projects financed with federal funds awards, the terms and conditions of which are incorporated herein by reference.

**Funding Shortfall Event** has the meaning ascribed to such term in Section 5(b) of this Agreement.

**Lender** means Bank of America, N.A.

**MTC** means the Metropolitan Transportation Commission, acting in its capacity as the “designated recipient” as defined in Section 5302 of Chapter 53 of Title 49 of the United States Code for the Participating UZAs or its capacity as the designated “metropolitan planning organization” as defined in Section 5303 of Chapter 53 of Title 49 of the United States Code for the Bay Area Region, as applicable.

**MTC Debt Service Advance** means amounts transferred by MTC, in its sole discretion, to BAIFA or the Lender from funds that are lawfully available to MTC other than FTA Formula Funds, proceeds of BAIFA Obligations or MTC Project Disbursements, to provide funds to pay BAIFA Obligations, including interest and other financing costs for which sufficient Programmed Grant Receipts have not been otherwise transferred to BAIFA, and for which MTC shall be eligible under the terms of the MTC LONP to subsequently Program, and be reimbursed from, FTA Formula Funds and designated in writing by MTC as constituting an MTC Debt Service Advance.

**MTC Funding Obligation** means an amount equal to (i) the amount of the outstanding BAIFA Obligations, including interest and other financing costs, coming due and payable at any time during each Federal Fiscal Year, plus (ii) the amount of all other obligations coming due and payable under the BART Project Loan Agreement at any time in each such Federal Fiscal Year and, in each case, not paid from other lawfully available sources in such Federal Fiscal Year.

**MTC LONP** means the Amended Letter of No Prejudice with respect to the BART Project received by MTC from FTA, dated June 9, 2023, establishing eligibility of MTC Funding Obligations or BAIFA Obligations to be repaid with FTA Formula Funds and irrevocably designated as an MTC LONP for purposes of the MTC Written Designation pursuant to this Agreement, together with any amendments or supplements thereto.

**MTC Project Disbursements** means amounts paid by MTC to BART, from funds that are lawfully available to MTC other than FTA Formula Funds or proceeds of BAIFA Obligations, for payment of costs of the BART Project, and designated in writing by MTC as constituting an MTC

Project Disbursement, provided that MTC shall be eligible under the terms of the MTC LONP to be subsequently reimbursed for such advances from Programmed Grant Receipts.

**MTC Written Designation** means a certificate of MTC in substantially the form attached hereto as Exhibit A delivered to BAIFA irrevocably designating the Programmed Grant Receipts and the MTC LONP for the benefit of BAIFA.

**Participating UZAs** means the UZAs of Antioch, Concord-Walnut Creek, Livermore-Pleasanton-Dublin and San Francisco-Oakland urbanized areas, and any successors thereto as contemplated in the MTC LONP.

**Parties** means MTC and BAIFA.

**Program or Programming** means, consistent with MTC Resolution No. 4444, the San Francisco Bay Area Transit Capital Priorities Process and Criteria, for each Federal Fiscal Year during the term of this Agreement, MTC taking all actions necessary to: (i) prepare MTC's TCP program recommendations for approval by MTC, (ii) prepare MTC's TIP recommendation for approval by MTC; (iii) prepare and submit grant applications to FTA necessary to receive FTA Formula Funds from FTA for such Federal Fiscal Year in an amount sufficient to pay all BAIFA Obligations anticipated to become due and payable in such Federal Fiscal Year; and (iv) reprogram, to the extent permitted by law, available FTA Formula Funds appropriated in prior Federal Fiscal Years to the extent that as of the last Business Day of the current Federal Fiscal Year, the FTA Formula Funds required to make payment of BAIFA Obligations then due and payable from the current Federal Fiscal Year appropriations have not been received.

**Programmed Grant Receipts** means the portion of FTA Formula Funds that are received and Programmed by MTC to pay MTC Funding Obligations as provided in this agreement and in accordance with the MTC LONP.

**RTP** means the Regional Transportation Plan described in Sections 65080 and 66508 of the California Government Code.

**TCP** means MTC's Transit Capital Priorities process.

**TIP** means the Transportation Improvement Program developed by MTC, as the Bay Area MPO, in accordance with Section 450.300 of Title 23 of the Code of Federal Regulations.

**UZA** means "urbanized area" as defined in Section 5302 and Section 5303, as applicable, of Chapter 53 of Title 49 of the United States Code.

(b) Construction. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, to the singular include the plural and to the part include the whole. The word "including" shall be deemed to mean "including but not limited to," and the word "or" has the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The Section headings contained in this Agreement and the table of contents preceding this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in

any respect. Section, subsection and exhibit references are to this Agreement unless otherwise specified. Unless otherwise specified, defined terms referencing any entity shall include its successors and assigns, as applicable, and defined terms referencing any federal program, statute, regulation, code section or other law shall include all successors or replacements therefor.

(c) Accounting Terms. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with Generally Accepted Accounting Principles applicable to government entities in the United States.

## **Section 2. Purposes; BAIFA Obligations; MTC Written Designation.**

(a) Purpose. This Agreement sets forth the commitments of MTC and BAIFA to facilitate MTC's regional transportation planning process by way of BAIFA facilitating the financing and refinancing of a portion of the costs of the BART Project, including from the proceeds of BAIFA Obligations.

(b) BAIFA Obligations. Subject to the terms and conditions of this Agreement, BAIFA, with assistance from MTC, shall undertake financings and refinancings to facilitate the cost-effective issuance or incurrence by BAIFA of BAIFA Obligations from time to time, including any BAIFA Obligations issued to and purchased by MTC, for BAIFA to provide BAIFA Disbursements for the benefit of the BART Project and to reimburse MTC for any MTC Project Disbursement and any MTC Debt Service Advance.

(c) MTC Obligations; MTC Written Designation. To secure the MTC Funding Obligation established by this Agreement and to induce BAIFA to incur BAIFA Obligations under the BART Project Loan Agreement, MTC shall deliver its MTC Written Designation to BAIFA on the Effective Date.

## **Section 3. Obligations of MTC; Programmed Grant Receipts.**

(a) Programming of FTA Formula Funds; Requests for Payment of FTA Formula Funds. Subject to the terms of this Agreement and the MTC LONP, MTC shall take all actions within its control (including, without limitation, the timely exercise of rights and remedies provided to MTC under the BART T&R Project Funding Agreement) to Program for each Federal Fiscal Year an aggregate amount of FTA Formula Funds sufficient to pay for such Federal Fiscal Year:

- (i) the MTC Funding Obligation;
- (ii) the amount necessary to pay MTC for an MTC Debt Service Advance not previously reimbursed; and
- (iii) the amount necessary to pay MTC for an MTC Project Disbursement made in a prior Federal Fiscal Year and not previously reimbursed.

MTC shall draw down the FTA Formula Funds Programmed by MTC to pay MTC Funding Obligations through FTA's electronic clearinghouse operation web system at least three (3)



business days prior to any designated payment date for the BAIFA Obligations and, upon receipt, shall promptly transfer the amount of such FTA Formula Funds to the designated BAIFA account not less than one (1) business day prior to any designated payment date for the BAIFA Obligations.

(b) Priorities of FTA Formula Funds. MTC hereby covenants and agrees that prior to and during each Federal Fiscal Year during the term of this Agreement, it will Program the applicable amount of FTA Formula Funds for the purposes set forth in Section 3(a) of this Agreement, it being understood that FTA Formula Funds Programmed in respect of the MTC Funding Obligation shall have priority over FTA Formula Funds that are Programmed by MTC in respect of the amounts described in Section 3(a)(iii) of this Agreement. MTC's Programming of FTA Formula Funds for the purposes described in Section 3(a)(i) of this Agreement shall have precedence over all other programming of FTA Formula Funds by MTC to other projects or purposes in each applicable Bay Area UZA. After payment or funding of all amounts necessary to make the payments specified in Section 3(a) of this Agreement, any remaining FTA Formula Funds may be Programmed by MTC for any other lawful purpose. As long as any MTC Funding Obligation remains unpaid, MTC agrees not to amend or modify its project funding score priorities set forth in Resolution 4444 of the MTC board of directors dated January 27, 2021, as revised on September 28, 2022, if as a result thereof the repayment of the MTC Funding Obligations is in any project funding score priority other than the highest project funding score priority.

(c) Pledge: Application of Programmed Grant Receipts. MTC hereby pledges to BAIFA a security interest in and lien on all of its right, title and interest, whether now owned or in the future acquired by it and whether now existing or in the future coming into existence and wherever located, in and to the Programmed Grant Receipts to secure and pay, pursuant to Section 3(a) of this Agreement, all MTC Funding Obligations. Said pledge shall be valid and binding without any physical delivery or further act and shall be irrevocable until all MTC Funding Obligations, BAIFA Obligations, and other obligations and amounts due under this Agreement and the BAIFA Financing Documents are no longer outstanding pursuant to the terms thereof.

(d) Limitation of MTC Obligation. MTC's obligation to pay all amounts as set forth in this Agreement, including without limitation MTC Funding Obligations, is a special, limited obligation payable solely from Programmed Grant Receipts, and MTC is not liable, and shall not be deemed to be liable, in any way for payment of such amounts from any source of funds, excepting solely Programmed Grant Receipts actually received (or receivable) at any time by MTC. No other moneys or funds of MTC are hereby pledged or available for such purposes. MTC is not liable, and shall not be deemed to be liable, in any way for payment of BAIFA Obligations. If the federal government declines or ceases to appropriate or award the Programmed Grant Receipts to MTC or to authorize MTC to Program Programmed Grant Receipts to payment of MTC Funding Obligations, MTC has no obligation, and shall not be deemed to have any obligation, to provide any funding for payment of such amounts to BAIFA, or for payment of the BAIFA Obligations generally, under this Agreement or the BART Project Loan Agreement.

(e) MTC Debt Service Advances. MTC may determine, in its sole discretion, that to carry out the purposes and intents of this Agreement and to meet the goals of the RTP and TIP, it is necessary and appropriate to make MTC Debt Service Advances. At no time shall MTC be obligated to make such MTC Debt Service Advances, and any MTC Debt Service Advances

shall be made only to the extent MTC shall be eligible under the terms of the MTC LONP to exercise its Programming authority to be reimbursed from eligible FTA Formula Funds for such amounts in future funding cycles as set forth in Section 3(a)(iii) of this Agreement.

(f) Tax Covenant. MTC covenants and agrees that it will at all times do and perform all acts and things permitted by law and this Agreement that are necessary to assure that interest paid on any BAIFA Obligations that are designated as tax-exempt obligations will be excluded from gross income for federal income tax purposes and will take no action that would result in such interest not being so excluded. This covenant shall survive payment in full or defeasance of the BAIFA Obligations.

(g) Assistance with Issuance of BAIFA Obligations. MTC covenants and agrees that it will at all times do and perform all acts and things permitted by law and this Agreement that are necessary to assist BAIFA with BAIFA's issuance or incurrence of BAIFA Obligations, including assisting with compliance with federal securities law and the Code. Without limiting the foregoing, as long as any BAIFA Obligations remain outstanding and the funding commitment of Lender under the BART Project Loan Funding has not terminated, MTC covenants and agrees (i) to comply with its obligations under the BART T&R Project Funding Agreement and to timely exercise its rights and remedies thereunder to the fullest extent permitted by law; (ii) to promptly provide to BAIFA or Lender, as the case may be, such, material information regarding the BART Project as BAIFA and/or Lender may reasonably request or which BART provides to MTC (including, without limitation, any audit report that MTC obtains as a result of MTC's audit of the books and records of BART relating to the BART Project), it being understood that routine day-to-day communications between BART and MTC regarding requisitions and invoices shall not be considered "material;" (iii) to provide BAIFA and Lender with prompt written notice of the occurrence of an "Event of Default" under the BART T&R Project Funding Agreement; (iv) to provide written notice of any proceeding or investigation of which an Authorized Representative of MTC has actual knowledge against BART, MTC or any other person or entity, in any court or before any governmental authority or arbitration board or tribunal, that, if determined adversely, would reasonably be expected to materially adversely affect the eligibility of the BART Project to receive FTA Formula Funds; (v) to assist BAIFA in satisfying its reporting obligations and information requirements under the BART T&R Project Funding Agreement and to deliver BART requisition requests to BAIFA and Lender; (vi) not to revoke or seek to revoke the MTC Written Designation; (vii) not amend, modify or terminate or seek to amend, modify or terminate the MTC LONP without Lender's prior written consent; (viii) not to amend, modify, waive, terminate or forebear enforcement of any provision of the BART T&R Project Funding Agreement without Lender's prior written consent; and (ix) without Lender's prior written consent in each instance, not to consent to any request of BART to (1) cease to operate or modify the operations of the BART Project or take any action such that the BART Project would cease to qualify for FTA Formula Funds and/or (2) take any action that would result in the BART Project no longer qualifying for FTA Formula Funds, including without limitation any action that would constitute a breach of the terms of the FTA Master Agreement resulting in such loss of qualification.

**Section 4. BAIFA Obligations.** BAIFA shall issue or incur the BAIFA Obligations, in one or more series, from time to time, subject to the provisions of the BAIFA Authorizing Resolution, this Agreement and the BART Project Loan Agreement, to provide moneys to (i) fund BAIFA Disbursements, pursuant to requisitions from BART received by MTC and delivered to BAIFA and Lender in accordance with the terms of the BART Project Loan Agreement, (ii) refund or pay capitalized interest on BAIFA Disbursements or other BAIFA Obligations, (iii) to pay fees and other amounts owing to the Lender under the BART Project Loan Agreement, and (iv) pay MTC for any MTC Debt Service Advance or MTC Project Disbursement not previously reimbursed but solely to the extent that such MTC Debt Service Advance or MTC Project Disbursement qualifies for reimbursement from FTA Formula Funds Programmed by MTC and such repayment is requested by MTC.

**Section 5. Federal Funding.**

(a) Generally. During the term of this Agreement, MTC shall comply with all applicable laws of the United States of America and regulations of the FTA relating to the FTA Formula Funds (including 49 U.S.C. Section 5307 and 49 U.S.C. Section 5337) to be eligible to receive the FTA Formula Funds described in Section 3(a) of this Agreement, and to facilitate the timely receipt of the Programmed Grant Receipts.

(b) Insufficient Federal Funding; Funding Shortfall Event. In any Federal Fiscal Year in which either the (a) federal authorization of FTA Formula Funds, (b) annual appropriation of FTA Formula Funds, or (c) annual apportionment of FTA Formula Funds to the Participating UZAs is insufficient to provide the full amount of Programmed Grant Receipts necessary for the payment of the MTC Funding Obligation for such Federal Fiscal Year (each, a "Funding Shortfall Event"), MTC shall Program the maximum amount of Programmed Grant Receipts possible subject to the federal authorization, appropriation, and obligational authority amounts provided to the Participating UZAs in such Federal Fiscal Year and the Programming priority set forth in Section 3(b) of this Agreement in such Federal Fiscal Year, and in each subsequent Federal Fiscal Year until all of the MTC Funding Obligations have been paid. **FOR THE AVOIDANCE OF DOUBT AND NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT A FUNDING SHORTFALL EVENT SHALL IN NO CIRCUMSTANCE CONSTITUTE AN EVENT OF DEFAULT UNDER THIS AGREEMENT.**

(c) Prepayment. MTC shall have the right at any time or from time to time to prepay all or any part of the MTC Funding Obligations from lawfully available funds, subject to delivery of an opinion of counsel from a firm of nationally-recognized attorneys-at-law experienced in legal work relating to the issuance of municipal bonds selected by BAIFA that such prepayment will not, in and of itself, adversely affect the exclusion of interest on such BAIFA Obligations from gross income for federal income tax purposes or BAIFA's receipt of any tax credit or other subsidy in connection with such BAIFA Obligations, if applicable. BAIFA agrees that the BART Project Loan Agreement shall provide that Lender is obligated to accept such prepayments when the same are tendered by BAIFA in the manner and subject to the terms and conditions set forth in the BART Project Loan Agreement.

**Section 6. Events of Default and Remedies.**

(a) Events of Default. Each of the following constitutes an “Event of Default” hereunder:

(i) A failure by MTC to transfer to BAIFA available Programmed Grant Receipts in the amounts set forth in Section 3(a)(i) of this Agreement, provided that to the extent Programmed Grant Receipts received by MTC from FTA are not available in sufficient amounts due to a Funding Shortfall Event, such failure shall not be an Event of Default.

(ii) A failure by MTC to take action under Section 5(b) to Program the maximum amount of Programmed Grant Receipts, for a period of thirty (30) days after (A) the earlier of written notice, specifying such failure and requesting that it be remedied, has been given to MTC by BAIFA or by the Lender on behalf of BAIFA and (B) an Authorized Representative of MTC has actual knowledge of such failure; provided that, if such failure can be remedied but not within such thirty (30) day period and if MTC has taken all action reasonably possible to remedy such failure within such thirty (30) day period, such failure shall not become an Event of Default for so long as MTC shall diligently proceed to remedy the same;

(iii) A failure by MTC to observe or perform any covenant, condition, agreement or provision in this Agreement on its part to be observed or performed, other than as referred to in subsection (a)(i) of this Section 6, and such failure shall continue unremedied for a period of sixty (60) days after (A) the earlier of written notice, specifying such failure and requesting that it be remedied, has been given to MTC by BAIFA or by the Lender on behalf of BAIFA and (B) an Authorized Representative of MTC has actual knowledge of such failure; provided that, such failure shall not become an Event of Default if such failure can be remedied but not within such sixty (60) day period as long as MTC has taken all action reasonably possible to remedy such failure within such sixty (60) day period and MTC shall diligently continue to proceed to remedy the same;

(iv) A failure by BAIFA to observe or perform any covenant, condition, agreement or provision in this Agreement on its part to be observed or performed, other than as referred to in subsection (a)(i) or (a)(ii) of this Section 6, and such failure shall continue unremedied for a period of sixty (60) days after (A) the earlier of written notice, specifying such failure and requesting that it be remedied, has been given to BAIFA by MTC and (B) an Authorized Representative of BAIFA has actual knowledge of such failure; provided that, such failure shall not become an Event of Default if such failure can be remedied but not within such sixty (60) day period as long as BAIFA has taken all action reasonably possible to remedy such failure within such sixty (60) day period and BAIFA shall diligently continue to proceed to remedy the same;

(v) Any material provision of this Agreement (including without limitation those contained in Section 3(a) and Section 3(c) of this Agreement) at any time for any reason ceases to be valid and binding on MTC as a result of any legislative or administrative action by a governmental authority with competent jurisdiction or is

declared in a final non-appealable judgment by any court with competent jurisdiction to be null and void, invalid or unenforceable, or the validity or enforceability thereof is publicly contested by MTC, or MTC publicly contests the validity or enforceability of any obligation to Program FTA Formula Funds, or any Authorized Representative of MTC publicly repudiates or otherwise denies in writing that it has any further liability or obligation under or with respect to any provision of this Agreement.

(b) Remedies.

(i) Upon the occurrence of an Event of Default as set forth in subsections (a)(i), (a)(ii) or (a)(iii) of this Section 6, BAIFA, or the Lender on behalf of BAIFA, shall have the sole right to compel MTC to perform and carry out its covenants and agreements with BAIFA as provided herein in an action for a writ of mandamus.

(ii) Upon the occurrence of an Event of Default as set forth in subsections (a)(iv) of this Section 6, MTC shall have the right to compel BAIFA to perform and carry out its covenants and agreements with MTC as provided herein in an action for a writ of mandamus.

(iii) Upon the occurrence of any Event of Default (other than an Event of Default set forth in subsection (a)(iv) of this Section 6), BAIFA, or the Lender on behalf of BAIFA, may exercise any and all remedies as it may have under the BAIFA Financing Documents and as otherwise available at law and at equity.

(iv) Upon the occurrence of any Event of Default set forth in subsection (a)(iv) of this Section 6, MTC may exercise any and all remedies as it may have under the BAIFA Financing Documents and as otherwise available at law and at equity.

(c) Cumulative Remedies. The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

**Section 7. General Provisions.**

(a) Term. This Agreement shall be effective on the Effective Date and shall terminate when no further MTC Funding Obligations remain due pursuant to this Agreement.

(b) BART T&R Project Funding Agreement. The BART T&R Project Funding Agreement shall be acknowledged by BAIFA and the terms and conditions of the BART T&R Project Funding Agreement shall be incorporated by reference into this Agreement to the fullest extent necessary to facilitate the issuance of the BAIFA Obligations and included as Exhibit C hereto; provided, however, if there is a conflict between specific provisions of this Agreement and the provisions of the BART T&R Project Funding Agreement incorporated herein, the specific provisions of this Agreement (excluding the BART T&R Project Funding Agreement incorporated herein) shall govern for purposes of interpreting this Agreement.

(c) Further Actions. Each Party shall diligently fulfill the duties assigned to it under this Agreement, including executing and delivering all such documents and instruments as

shall be required to enable the Parties to perform their respective obligations hereunder, and to give effect to the transactions contemplated by this Agreement.

(d) Severability. The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal, or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid unless the exclusion of the particular term or provision held to be invalid would defeat the purposes of this Agreement in which case the Parties shall negotiate in good faith to modify this Agreement to give effect to the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(e) Assignment. The Parties agree that neither Party may assign any of the responsibilities under this Agreement without the written consent of the other Party.

(f) No Construction Against Drafter. This Agreement is to be construed as if the Parties drafted it jointly.

(g) Third Party Beneficiaries; Pledge of Agreement. MTC and BAIFA are the only Parties entitled to enforce the terms of this Agreement, and nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right to any third-party. Notwithstanding the foregoing, the Lender shall be a third-party beneficiary to the representations, covenants and agreements set forth in this Agreement; provided that, the Lender shall have the sole right to enforce the terms of this Agreement on behalf of BAIFA as provided in Section 6(b)(i) and 6(b)(iii) of this Agreement.

MTC hereby consents and agrees that BAIFA may, and shall, assign, pledge and grant to the Lender a security interest in and lien on and over BAIFA rights and remedies set forth in this Agreement.

(h) No Set-Off. If a dispute arises between the Parties, MTC and BAIFA agree that so long as the BAIFA Obligations are outstanding and the funding commitment of Lender under the BART Project Loan Funding has not terminated neither Party shall take any action that would reduce the amounts of Programmed Grant Receipts that are to be applied and paid under this Agreement as a set-off for damages MTC or BAIFA may claim it is owed. To the extent MTC or BAIFA is entitled to any damages for any breach by BART of the terms of the BART T&R Project Funding Agreement, MTC or BAIFA shall seek payment of those damages solely from funds of BART and not from Programmed Grant Receipts.

(i) Notices. All notices to be given under this Agreement must be in writing and addressed as shown below, or to other addresses that either Party may hereafter indicate pursuant to this Section. Notices may be delivered by personal delivery or mailed, postage prepaid. Any such notice is effective five calendar days after mailing, or upon actual delivery if personally delivered.

**Metropolitan Transportation Commission**  
Bay Area Metro Center

375 Beale Street, Suite 800  
San Francisco, California 94105  
Attention: Chief Financial Officer  
Phone: (415) 778-6700  
Fax: (415) 536-9815

**Bay Area Infrastructure Financing Authority**

Bay Area Metro Center  
375 Beale Street, Suite 800  
San Francisco, California 94105  
Attention: Treasurer  
Phone: (415) 778-6700  
Fax: (415) 536-9815

**With copy to Lender:**

Municipal Banking and Markets  
Bank of America, N.A  
100 Federal Street  
Boston, MA 02110  
Attention: Collin De La Bruere  
Telephone: (617) 434-1362  
Email: collin.delabruere@bofa.com

(j) Entire Agreement. This Agreement (including all exhibits, schedules or attachments) constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement (including all exhibits, schedules or attachments). No waiver, consent, modification, or change of terms of this Agreement shall bind either Party unless in writing and signed by the Authorized Representative of both Parties and all necessary approvals have been obtained. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given.

(k) Amendments, Waivers. This Agreement may not be amended without the prior written consent of an Authorized Representative of MTC, an Authorized Representative of BAIFA and, while BAIFA Obligations are outstanding, the Lender. This Agreement may not be amended in a manner that is not in compliance with applicable State and federal laws or, to the extent the interest on BAIFA Obligations is intended to be excludable from gross income, the provisions of the Code applicable to obligations bearing interest that is excludable from gross income. No waiver or consent is effective unless in writing and executed by the Authorized Representative of the Party against whom such waiver or consent is sought to be enforced and the Lender. Such waiver or consent will be effective only in the specific instance and for the specific purpose given. In the event that federal rules or federal laws change in a manner that affects the administration of this Agreement, the outstanding BAIFA Obligations, or the payment of debt service on the BAIFA Obligations, the Parties in consultation with the Lender, whose consent shall not be unreasonably withheld, shall negotiate in good faith to amend or modify this Agreement to

give effect to the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(l) Choice of Law; Designation of Forum; Federal Forum. The laws of the State of California (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement. Any Party bringing a legal action or proceeding against any other Party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Superior Court of California County of San Francisco (unless California law requires that it be brought and conducted in another county). Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum. Notwithstanding the above, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the Northern District of California.

(m) Integration. This Agreement (including all exhibits, schedules or attachments) constitutes the entire agreement between the Parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Agreement.

(n) Execution in Counterparts. This Agreement may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGES FOLLOW]



IN WITNESS WHEREOF, the Parties hereby acknowledge that they have the authority granted by their respective governing body to execute this Agreement and hereto have set their hands as of the Effective Date.

**METROPOLITAN TRANSPORTATION  
COMMISSION**

**BAY AREA INFRASTRUCTURE  
FINANCING AUTHORITY**

By \_\_\_\_\_  
Andrew B. Fremier, Executive Director

By \_\_\_\_\_  
Derek Hansel, Treasurer

**EXHIBIT A**  
**FORM OF MTC WRITTEN DESIGNATION**

**FORM OF MTC WRITTEN DESIGNATION**

**TO: Bay Area Infrastructure Financing Authority (“BAIFA”) and Bank of America, N.A., as Lender (the “Lender”) under the BART Project Loan Agreement, dated as of [\_\_\_\_\_] 1, 2023, by and between BAIFA and the Lender.**

The Metropolitan Transportation Commission (“MTC”), a public entity duly organized and existing under the laws of the State of California, hereby states and certifies:

(a) that Andrew B. Fremier is the duly appointed, qualified and acting Executive Director of MTC, and as such, is familiar with the facts herein certified and is authorized and qualified to certify the same;

(b) that MTC irrevocably designates the letter from the Federal Transit Administration, dated June 9, 2023, attached hereto as Exhibit A, as a “MTC LONP” as such term is defined in the Regional Transit Project Funding Agreement, dated as of [\_\_\_\_\_] 1, 2023, by and between MTC and BAIFA (the “RTF Agreement”); and

(c) that MTC irrevocably designates the funds described in the MTC LONP attached hereto as Exhibit A as “Programmed Grant Receipts” as such term is defined in the RTF Agreement.

**METROPOLITAN TRANSPORTATION  
COMMISSION**

---

Andrew B. Fremier,  
Executive Director

Date [\_\_\_\_\_] 1, 2023

CREDIT AGREEMENT

between

BAY AREA INFRASTRUCTURE FINANCING AUTHORITY

and

BANK OF AMERICA, N.A.

\_\_\_\_\_

Dated as of November \_\_, 2023

\_\_\_\_\_

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## **CREDIT AGREEMENT**

This CREDIT AGREEMENT, dated as of November \_\_, 2023 (this “Agreement”), is made by and between BAY AREA INFRASTRUCTURE FINANCING AUTHORITY (including its successors and permitted assigns, the “Borrower”), a joint exercise of powers agency organized and existing under the laws of the State of California (the “State”) and BANK OF AMERICA, N.A., a national banking association (including its successors and permitted assigns, the “Bank”).

### **RECITALS**

WHEREAS, the Borrower wishes to obtain a line of credit (the “Line of Credit”) from the Bank hereunder, and the Bank is willing to provide the Line of Credit to the Borrower, upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals and other consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce the Bank to extend to the Borrower the Line of Credit, the Borrower and the Bank hereby agree as follows:

### **ARTICLE I DEFINITIONS; CONSTRUCTION**

**Section 1.1. Certain Defined Terms.** Capitalized terms used but not defined herein shall have the meanings given to them in the MTC Grant Funding Agreement. In addition, the following terms, as used herein, have the following meanings:

“Act” means California Government Code Section 6500 et. seq.

“Advance Date” means each date on which the Bank honors a Request for a Loan and makes the funds available to the Borrower pursuant to the terms hereof.

“Affiliate” means, as to any Person, a corporation, partnership, association, agency, instrumentality, joint venture, business trust or similar entity organized under the laws of any state that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person.

“Agreement” means this Credit Agreement, as the same may from time to time be amended, supplemented, amended and restated or otherwise modified in accordance with its terms.

“Amortization Date” means the fourth anniversary of the Effective Date, the fifth anniversary of the Effective Date and the Maturity Date.

“Amortization Period” means the period commencing on the third anniversary of the Effective Date and ending on the Maturity Date.

“Applicable Authority” means with respect to SOFR, the SOFR Administrator or any governmental authority having jurisdiction over the Bank or the SOFR Administrator.

“Applicable Law” means all applicable (a) common law and principles of equity and (b) provisions of all (i) constitutions, statutes, rules, regulations and orders of any Governmental



Authority, (ii) Governmental Approvals and (iii) orders, decisions, judgments and decrees of all courts (whether at law or in equity) and arbitrators.

“Applicable Margin” means 0.70% per annum (70 basis points).

“Apportioned Section 5307 Formula Funds” means, for any Federal Fiscal Year, the Section 5307 Formula Funds apportioned to MTC for the Participating UZAs for such Federal Fiscal Year.

“Apportioned Section 5337 Formula Funds” means, for any Federal Fiscal Year, the Section 5337 Formula Funds apportioned to MTC for the Participating UZAs for such Federal Fiscal Year.

“Audited Financial Statements” has the meaning set forth in Section 6.7(a) hereof.

“Authorization” means federal legislation or a continuing resolution authorizing the United States Congress to appropriate funds for programs authorized under 49 U.S.C. §5307 and under 49 U.S.C. §5337.

“Authorizing Resolution” means Resolution No. \_\_\_ adopted by the Borrower on October 25, 2023, and all amendments and supplements thereto.

“Authorized Officer” means the Executive Director of the Borrower, any Deputy Executive Director of the Borrower, the Treasurer of the Borrower, or any other employee, employees, representative or representatives of the Borrower designated to act on behalf of the Borrower by the board of the Borrower and subject to delivery to the Bank of a certificate of the Borrower containing the specimen signature of each such person to act on behalf of the Borrower.

“Availability Period” means the period commencing on the Effective Date and ending on the Commitment Termination Date.

“Available Commitment” means an amount equal to the Commitment Amount as adjusted from time to time as follows: (a) downward in an amount equal to any Loan made to the Borrower hereunder; (b) downward in an amount equal to any reduction thereof effected pursuant to Section 2.4(b), 7.2(a) or 7.3 hereof; (c) upward in an amount equal to any reinstatement thereof effected pursuant to Section 7.3 hereof; and (d) downward to zero upon the Commitment Termination Date.

“Bank” has the meaning set forth in the introductory paragraph hereof.

“Bank Account” means the account of the Bank to which payment of Repayment Obligations and other Obligations are required to be paid, which account shall be specified in writing by the Bank to the Borrower.

“Bank Affiliate” means the Bank and any Affiliate of the Bank.

“Bank’s Office” means the Bank’s address and, as appropriate, the Bank’s account as set forth in Section 8.2 hereof, or such other address which the Bank may from time to time provide notice to the Borrower with respect thereto.

“BART” means San Francisco Bay Area Rapid Transit District.

“BART T&R Agreement” means the Project Funding Tax and Regulatory Agreement, dated as of [\_\_\_\_\_], 2023 by and between MTC and BART, and acknowledged by BAIFA, as it may be amended, supplemented, restated and/or modified from time to time.

“Base Rate” means, for any day, a rate of interest per annum equal to the greatest of (a) the Prime Rate in effect at such time plus one percent (1%), (b) the Federal Funds Rate in effect at such time plus two percent (2%), and (c) seven percent (7%) per annum; *provided, however*, that upon the occurrence and during the continuance of an Event of Default (and without any notice given with respect thereto), “Base Rate” shall mean the Default Rate, plus the Applicable Margin.

“Base Rate Loan” means a Loan that bears interest at a Base Rate.

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Beneficial Owner” has the meaning set forth in Section 3.5(a) hereof.

“Borrower” has the meaning set forth in the introductory paragraph hereof.

“BSA” has the meaning set forth in Section 8.16 hereof.

“Business Day” means any day other than (i) a legal holiday in the State, and (ii) a Saturday, Sunday, or any other day on which banking institutions in San Francisco, California, New York City or any other city in which the office of the Bank at which Requests for Loans may be presented hereunder are authorized or required by law or other governmental action to close.

“Change in Law” means the occurrence, after the Effective Date, of any of the following, (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority, or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; including any of the foregoing not yet implemented or effective under: (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith or in the implementation thereof, and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III.

“CME” means CME Group Benchmark Administration Limited.

“Collateral” has the meaning set forth in Section 5.16 hereof.

“Collateral Account” means the deposit account in the name of the Borrower established with the Bank and to which Programmed Grant Receipts are required to be transferred by MTC.

“Collateral Account Control Agreement” has the meaning set forth in Section 4.1(e) hereof.

“Commitment” means the agreement of the Bank pursuant to Section 2.1 hereof to make Loans under the terms hereof for the account of the Borrower.

“Commitment Amount” means \$450,000,000.

“Commitment Fee” has the meaning set forth in Section 2.8 hereof.

“Commitment Fee Rate” means 0.30% per annum (30 basis points).

“Commitment Termination Date” means the earliest of the following dates: (i) the date that is the third anniversary of the Effective Date; (ii) the date an Event of Termination occurs; (iii) the date the Borrower elects to terminate the Commitment pursuant to Section 2.4(a) hereof; and (iv) the date the Commitment terminates pursuant to Section 7.2(a) hereof.

“Communication” means this Agreement, any other Related Document and any document, any amendment, approval, consent, notice, certificate, request or authorization related to this Agreement or any other Related Document.

“Conforming Changes” means, with respect to the use, administration of or any conventions associated with SOFR or any proposed SOFR Successor Rate, any conforming changes to the definition of “Base Rate” and “SOFR,” timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Bank, to reflect the adoption and implementation of such applicable rate(s), and to permit the administration thereof by the Bank in a manner substantially consistent with market practice (or, if the Bank determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as the Bank determines is reasonably necessary in connection with the administration of this Agreement and the Note).

“Covered Entity” means any of the following: (a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Covered Party” has the meaning set forth in Section 8.19 hereof.

“Credit Spread Adjustment” means 0.11448% per annum (11.448 basis points).

“Daily SOFR Rate” means, with respect to any day (a “SOFR Rate Day”), a rate per annum equal to the sum of the Credit Spread Adjustment plus SOFR for the day (such day, the “SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website; *provided, however*, that if Daily SOFR determined as provided above would be less than zero percent (0.00%), then the Daily SOFR Rate shall be deemed to be zero percent (0.00%); and, *provided, further that*, upon the occurrence and during the continuance of an Event of Default (and without any notice given with respect thereto), “Daily SOFR Rate” shall mean the Default Rate. If by 2:00 p.m. (San

Francisco time) on the second (2nd) U.S. Government Securities Business Day immediately following any SOFR Determination Day, SOFR in respect of such SOFR Determination Day has not been published on the SOFR Administrator's Website, then SOFR for such SOFR Determination Day will be SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which SOFR was published on the SOFR Administrator's Website; *provided* that any SOFR determined pursuant to this sentence shall be utilized for purposes of calculation of Daily SOFR for no more than three (3) consecutive SOFR Rate Days. Any change in the Daily SOFR Rate due to a change in SOFR shall be effective from and including the effective date of such change in SOFR.

"Daily SOFR Rate Loan" means a Loan that bears interest at a Daily SOFR Rate.

"Debt Moratorium" means, with respect to a Person, an authorized postponement or deferral of the maturity of, or the deadline for paying a debt or performing an obligation of such Person which exceeds six (6) months.

"Default" means any event or condition that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Default Rate" means, on any particular date, the lesser of (i) the Base Rate plus four percent (4.00%) per annum, and (ii) the Maximum Lawful Rate.

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"Designated Jurisdiction" means any country or territory to the extent that such country or territory is the subject of any Sanction.

"Dollar" and "\$" mean lawful money of the United States.

"Effective Date" means the date on which the conditions precedent set forth in Section 4.1 hereof are satisfied or waived by the Bank.

"Electronic Copy" shall have the meaning specified in Section 8.15 hereof.

"Electronic Record" or "Electronic Signature" shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

"Employee Plan" means an employee benefit plan covered by Title I of ERISA and maintained for employees of the Borrower.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto.

"Event of Default" with respect to this Agreement means an Event of Default under the Indenture and the additional events of default set forth in Section 7.1 hereof.

"Event of Insolvency" means, with respect to a Person, the occurrence and continuance of one or more of the following events: (a) such Person shall (i) voluntarily commence any case or proceeding or file any petition in a court of competent jurisdiction seeking to adjudicate it as

bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it, or seeking to declare a moratorium with respect to any obligations of such Person under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors, (ii) consent to the institution of, or fail to controvert in a timely and appropriate manner, any such case or proceeding or the filing of any such case or petition, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator or similar official for itself or for a substantial part of its property, (iv) file an answer admitting the material allegations of a case or petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, (vi) become unable or admit in writing its inability to pay its debts as they become due or (vii) take action for the purpose of effecting any of the foregoing; (b) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of such Person or of a substantial part of the property of such Person, under any federal, state or foreign bankruptcy, insolvency or similar law or (ii) the appointment of a receiver, trustee, custodian, sequestrator or similar official for such Person or for a substantial part of the property of such Person, and such proceeding or petition shall continue undismissed and unstayed for sixty (60) days; or (c) an order or decree for relief shall be entered against such Person in a court of competent jurisdiction under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors.

“Event of Non-Appropriation” means (i) the failure of the United States Congress to appropriate funds for programs authorized under 49 U.S.C. §5307 or 49 U.S.C. §5337 in any Federal Fiscal Year; (ii) the failure of the FTA to apportion to the Participating UZAs for which MTC is the designated recipient, by the last day of any Federal Fiscal Year, Section 5307 Formula Funds and Section 5337 Formula Funds that have been appropriated by the United States Congress for such Federal Fiscal Year in an aggregate amount at least sufficient to pay, when due, the principal of and interest on the Loans and all other Obligations hereunder payable in such Federal Fiscal Year; or (iii) the non-receipt by MTC (other than as a result of any failure to act on the part of MTC) of Apportioned Section 5307 Formula Funds and Apportioned Section 5337 Formula Funds from the federal government in any Federal Fiscal Year in an aggregate amount at least sufficient to pay, when due, the principal of and interest on the Loans and all other Obligations hereunder payable in such Federal Fiscal Year.

“Event of Non-Authorization” means any event or occurrence as the result of which there shall not be in effect an Authorization.

“Event of Suspension” means (i) the occurrence and continuance of an Event of Non-Appropriation; (ii) the occurrence and continuance of an Event of Non-Authorization or (iii) the Railcar Agreement is terminated for any reason prior to the expiration thereof in accordance with its terms.

“Event of Taxability” means (a) a change in Law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the Borrower, or the failure to take any action by the Borrower, or the making by the Borrower of any misrepresentation herein or in any certificate required to be given in connection with this Agreement or the making of any Loan) which has the effect of causing interest paid or payable on such Loan to become includable, in whole or in part, in the gross income of the recipient thereof or any former recipient thereof for federal income tax purposes or (b) the entry of any decree or judgment by a court of competent jurisdiction, or the taking of any official

action by the Internal Revenue Service or the Department of the Treasury, which decree, judgment or action shall be final under applicable procedural law, in either case, which has the effect of causing interest paid on any Loan to become includable, in whole or in part, in the gross income of the recipient thereof or any former recipient thereof for federal income tax purposes.

“Event of Termination” means (i) MTC ceases for any reason to be “metropolitan planning organization” (as defined in 49 U.S.C. §5303(b)) for any of the Participating UZAs; (ii) MTC ceases for any reason to be the “designated recipient” as defined in 49 U.S.C. §5302 for the Participating UZAs; or (iii) the MTC LONP is withdrawn by FTA or ceases for any reason to be valid and binding on FTA as a result of any legislative or administrative action by a governmental authority with competent jurisdiction or is declared in a final non-appealable judgment by any court with competent jurisdiction to be null and void, invalid or unenforceable, or the validity or enforceability thereof is publicly contested by FTA.

“Excess Interest” has the meaning set forth in Section 2.9 hereof.

“Excess Interest Fee” has the meaning set forth in Section 2.9 hereof.

“Excluded Taxes” means, with respect to the Bank or any Participant, taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the Laws of which such recipient is organized or in which its principal office is located.

“Federal Fiscal Year” means the annual period commencing on October 1 of a calendar year and ending on September 30 of the next calendar year.

“Federal Funds Rate” means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective date; *provided, that*, if the Federal Funds Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“FTA” means the U.S. Federal Transit Administration.

“GAAP” means generally accepted accounting principles in effect from time to time in the United States, as they relate to state and local governmental units, including Governmental Accounting Standards Board (GASB) pronouncements.

“Governmental Approvals” means an authorization, consent, approval, license or exemption of, registration or filing with, or report to, any Governmental Authority.

“Governmental Authority” means the government of the United States or any applicable political subdivision thereof, state or local or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, authority, administration, central bank, service, district or other instrumentality of any governmental entity or quasi-governmental entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government.

“Guarantees” means, for any Person, all guarantees and other contingent obligations of such Person to purchase, to provide funds for payment, to supply funds to invest in any other Person or otherwise to assure a creditor of another Person against loss.

“Indebtedness” of the Borrower means, at any date, without duplication, (a) all obligations of the Borrower for borrowed money, (b) all obligations of the Borrower evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of the Borrower to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (d) all obligations of the Borrower as lessee under capital leases, (e) all debt of others secured by a Lien on any Property of the Borrower, whether or not such debt is assumed by the Borrower, (f) all Guarantees by the Borrower of debt of other Persons, (g) all obligations of the Borrower under any Swap Contract and (h) all obligations of the Borrower to reimburse or repay any bank or other Person in respect of amounts paid or advanced under a letter of credit, credit agreement, liquidity facility or other instrument; *provided* that, for the avoidance of doubt, the MTC Grant Funding Agreement is not an Indebtedness of MTC.

“Interest Payment Date” means, with respect to any Daily SOFR Rate Loan or Base Rate Loan, the first Business Day of each January, April, July and October and the Maturity Date.

“Joint Powers Agreement” shall have the meaning specified in Section 4.1(a)(iv) hereof.

“Law” means, collectively, all applicable U.S., state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, requests, licenses, authorizations and permits of, and agreements with, any applicable Governmental Authority, in each case whether or not having the force of law.

“Loan” means, upon a Request for Loan and subject to the satisfaction of the conditions precedent set forth in Section 4.2 hereof, an advance of funds by the Bank to the Borrower under the Available Commitment and the terms hereof.

“Material Adverse Effect” means (a) a materially adverse change in, or material adverse effect upon, the operations, business, property or condition (financial or otherwise) of the Borrower that could reasonably be expected to have a material adverse effect on the Borrower’s ability or obligation to pay any Obligation when due hereunder, (b) a impairment of the ability of the Borrower to perform its material obligations hereunder or under any Related Document or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the Borrower of this Agreement or any Related Document or the rights, security, or remedies of the Bank hereunder or thereunder, as applicable.

“Maturity Date” means the sixth anniversary of the Effective Date.

“Maximum Lawful Rate” means the lesser of (i) 15% and (ii) the maximum rate of interest on the relevant obligation permitted by Applicable Law.

“MTC” has the meaning given thereto in the MTC Grant Funding Agreement.

“MTC Funding Obligation” has the meaning given thereto in the MTC Grant Funding Agreement.

“MTC Grant Funding Agreement” means Regional Transit Funding Agreement, dated as of [\_\_\_\_\_], 2023 by and between MTC and the Borrower, as it may be amended, supplemented, restated and/or modified from time to time with the prior written consent of the Bank.

“MTC LONP” has the meaning given thereto in the MTC Grant Funding Agreement.

“MTC Written Designation” has the meaning given thereto in the MTC Grant Funding Agreement.

“Note” has the meaning set forth in Section 2.3 hereof.

“Obligations” means the Repayment Obligations (which includes outstanding Loans as evidenced by the Note), the Commitment Fees and all other obligations of the Borrower to the Bank arising under or in relation to this Agreement or the Note.

“OFAC” has the meaning set forth in Section 8.16 hereof.

“Other Taxes” means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Related Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Related Document.

“Participant” has the meaning set forth in Section 8.8(c) hereof.

“Participating UZAs” has the meaning given thereto in the MTC Grant Funding Agreement.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Title III of Pub. L. 107-56 (signed into law October 26, 2001), as amended.

“Person” means an individual, a corporation, a partnership, a limited liability company, an association, a joint venture, a trust, an unincorporated organization or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

“Prime Rate” means on any day, the rate of interest per annum then most recently established by the Bank as its “prime rate” for United States dollar loans made in the United States. The “prime rate” is a rate set by the Bank based upon various factors including the Bank’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such established. Any change in such rate announced by the Bank shall take effect at the opening of business on the day specified in the public announcement of such change.

“Programmed Grant Receipts” has the meaning given thereto in the MTC Grant Funding Agreement.

“Project Loan” means any Loan other than a Repayment Loan.



“Property” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

“QFC Credit Support” has the meaning specified in Section 8.19 hereof.

“Railcar Agreement” means the Contract for Procurement of Transit Vehicles, Contract No. 40FA-110 entered into as of June 14, 2012, between BART and Bombardier Transit Corporation, together with all procurement terms, specifications and change orders.

“Refinancing” has the meaning set forth in Section 6.11 hereof.

“Reimbursed Taxes” means Taxes other than Excluded Taxes.

“Related Documents” means this Agreement, the Authorizing Resolution, the BART T&R Agreement, the Collateral Account Control Agreement, the MTC Grant Funding Agreement, the MTC LONP, the MTC Written Designation, the Note and the Written Instruction.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, administrators and managers of such Person and of such Person’s Affiliates.

“Repayment Loan” means any Loan automatically made to the Borrower by the Bank during the Availability Period in order to pay when due (i) interest on the principal amount of each outstanding Loan, (ii) Commitment Fees and (iii) other Obligations (other than the principal amount of any Loan).

“Repayment Obligations” means the obligations of the Borrower to repay the Bank for Loans and the Note evidencing the Loans, together with interest thereon, pursuant to and in accordance with this Agreement.

“Request for Loan” has the meaning set forth in Section 2.2(a) hereof.

“Sanction(s)” means any sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury (“HMT”) or other relevant sanctions authority.

“Section 5307 Formula Funds” means, for any Federal Fiscal Year, the FTA Section 5307 (49 U.S.C. §5307) Urbanized Area Formula Funds.

“Section 5337 Formula Funds” means, for any Federal Fiscal Year, the FTA Section 5337 (49 U.S.C. §5337) Urbanized Area Formula Funds.

“SOFR” means the Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York (or a successor administrator).

“SOFR Administrator” means the Federal Reserve Bank of New York, as the administrator of SOFR, or any successor administrator of SOFR designated by the Federal Reserve Bank of New York or other Person acting as the SOFR Administrator at such time.

“SOFR Administrator’s Website” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“SOFR Scheduled Unavailability Date” has the meaning set forth in Section 3.3(b)(ii) hereof.

“SOFR Successor Rate” has the meaning set forth in Section 3.3(b) hereof.

“Supported QFC” has the meaning specified in Section 8.19 hereof.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Tax Event” shall be deemed to have occurred on the first to occur of the following: (a) the date of entry of any decree or judgment by a court of competent jurisdiction (whether or not such decree or judgment is appealable or deemed to be final under applicable procedural law, or by operation of law) that interest on a Loan is includable in the gross income of the recipient thereof for federal income tax purposes, or (b) the date of the issuance by the Internal Revenue Service of a Letter 4413 Notice of Proposed Adverse Determination to the Borrower to the effect that all or any portion of the interest on a Loan is not excluded from gross income for federal income tax purposes, or (c) delivery to the Borrower and the Bank of a written legal opinion (which opinion shall not be a reasoned opinion and shall be subject to only customary assumptions and exclusions) of nationally recognized bond counsel reasonably acceptable to the Borrower and the Bank to the effect that an Event of Taxability has occurred with respect to a Loan, or (d) on that date when the Borrower shall receive notice from the Bank (or any assignee or Participant thereof) that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of such Person the interest on a Loan due to the occurrence of an Event of Taxability, or (e) on that date when the Borrower files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability with respect to a Loan shall have in fact occurred, or (f) on the date when the Borrower shall be advised in writing by the Commissioner or any District Director of the Internal Revenue Service (or any other government

official or agent exercising the same or a substantially similar function from time to time) that, based upon filings of the Borrower, or upon any review or audit of the Borrower or upon any other ground whatsoever, an Event of Taxability shall have occurred with respect to a Loan; *provided, however,* no Tax Event shall occur under subparagraph (b), (d) or (f) hereunder unless the Borrower has been afforded the opportunity, at its expense, to contest any such assessment, and, further, no Tax Event shall occur until such contest, if made, has been finally determined; *provided further, however,* that upon demand from the Bank (or any assignee or Participant thereof), the Borrower shall promptly reimburse, but solely from payments made by the Borrower, the Bank (or any assignee or Participant thereof) for any payments, including any taxes, interest, penalties or other charges, the Bank (or any assignee or Participant thereof) shall be obligated to make as a result of the Tax Event.

“Taxable Date” means, with respect to a Loan, the date as of which interest on such Loan is first includible in gross income of the recipient thereof (or any assignee or Participant thereof) as a result of an Event of Taxability as such a date is established pursuant to a Tax Event.

“Taxable Period” has the meaning set forth in Section 3.5(a) hereof.

“Taxes” means all present and future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees, liabilities or other charges imposed by any applicable Governmental Authority, including any interest, fines, additions to tax or penalties applicable thereto.

“United States” or “U.S.” means the United States of America.

“Unutilized Commitment” means on any day the Available Commitment at 2:00 p.m. on such day.

“U.S. Government Securities Business Day” means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

“U.S. Special Resolution Regimes” has the meaning specified in Section 8.19 hereof.

“UZA” has the meaning given thereto in the MTC Grant Funding Agreement.

“Written Instruction” has the meaning set forth in Section 4.1(d) hereof.

**Section 1.2. Computation of Time Periods.** In this Agreement, in the computation of a period of time from a specified date to a later specified date, unless otherwise specified herein, the word “from” means “from and including” and the words “till” and “until” each mean “to but excluding.” Unless specified otherwise, all references to time shall mean San Francisco, California time.

**Section 1.3. Accounting Terms.** All accounting terms not specifically defined herein shall be construed in accordance with GAAP consistently applied.

**Section 1.4. Construction.** The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “but not limited to.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to any restrictions set forth herein), (c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof and (d) all references herein to Articles, Sections and Exhibits shall be construed to refer to Articles and Sections of, and Exhibits to, this Agreement.

**Section 1.5. Interest Rates.** The Bank does not warrant, nor accept responsibility, nor shall the Bank have any liability with respect to the administration, submission or any other matter related any reference rate referred to herein or with respect to any rate (including, for the avoidance of doubt, the selection of such rate and any related spread or other adjustment) that is an alternative or replacement for or successor to any such rates (including, without limitation, any SOFR Successor Rate) (or any component of any of the foregoing) or the effect of any of the foregoing, or of any Conforming Changes. The Bank and its Affiliates may engage in transactions or other activities that affect any reference rate referred to herein, or any alternative, successor or replacement rate (including, without limitation, any SOFR Successor Rate) (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to the Borrower. The Bank may select information sources or services in its reasonable discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including, without limitation, any SOFR Successor Rate) (or any component of any of the foregoing), in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or other action or omission related to or affecting the selection, determination, or calculation of any rate (or component thereof) provided by any such information source or service.

## **ARTICLE II COMMITMENT; LOANS; PAYMENTS**

**Section 2.1. Commitment.** The Borrower hereby applies to the Bank for and authorizes and instructs the Bank to issue for its account, the Commitment in an amount equal to the Commitment Amount. Subject to the terms and conditions hereof, the Bank, by its acceptance hereof, agrees to make a Loan or Loans, in each case, in U.S. Dollars to the Borrower from time to time prior to the Commitment Termination Date up to the amount of the then Available Commitment.

## **Section 2.2. Borrowings.**

### *(a) Borrowing of Project Loans.*

(i) Each borrowing of a Loan (other than a Repayment Loan) shall be made upon the Borrower's irrevocable notice to the Bank by electronic submission in the form of Exhibit A hereto with blanks appropriately completed (each, a "Request for Loan"). Each Request for Loan shall be signed by an Authorized Officer and shall specify: (i) the Advance Date for the requested Loan which shall be a Business Day; (ii) the principal amount of the Loan to be borrowed, which amount shall not be less than the minimum amount set forth in Section 2.2(a)(iii) and shall not exceed the Available Commitment as of the proposed Advance Date; and (iii) that the proceeds of the requested Loan shall be used solely for any purpose permitted pursuant to Section 6.15 hereof. Each Loan shall be made as Daily SOFR Rate Loan unless it is illegal for the Bank to make Daily SOFR Rate Loans or the Daily SOFR Rate is unavailable, in either of which case, such Loan shall be made as a Base Rate Loan.

(ii) Each Request for Loan must be received by the Bank not later than 12:00 noon on the Business Day which is one Business Day immediately prior to the requested Advance Date. Any Request for Loan received by the Bank after 12:00 noon on a Business Day shall be deemed received prior to 12:00 noon on the next succeeding Business Day.

(iii) Each borrowing of a Project Loan shall be in a principal amount of not less than \$1,000,000. No more than two (2) Project Loans may be made in a calendar month.

(iv) Each Loan (other than a Repayment Loan) shall be made by the Bank by wire transfer of immediately available funds to or for the account of the Borrower by 11:00 a.m. on the applicable Advance Date in accordance with written instructions provided by the Borrower in its Request for Loan. The Borrower hereby irrevocably instructs the Bank to credit the proceeds of Repayment Loans to the Bank Account.

*(b) Defective Notices.* If, after examination, the Bank shall have determined that a Request for Loan does not conform to the terms and conditions hereof, then the Bank shall use commercially reasonable efforts to give prompt notice to the Borrower to the effect that documentation was not in accordance with the terms and conditions hereof and stating the reasons therefor. The Borrower may attempt to correct any such nonconforming Request for Loan, if, and to the extent that, the Borrower is entitled (without regard to the provisions of this sentence) and able to do so.

**Section 2.3. Note; Evidence of Debt.** The Loans shall be evidenced by a promissory note in the form attached hereto as Exhibit B, dated the Effective Date, maturing on the Maturity Date and signed by an Authorized Officer (the "Note"). Each Loan made or deemed made by the Bank and all payments and prepayments made on account of the principal thereof shall be recorded by the Bank on the schedule (or a continuation thereof) attached to the Note, it being understood, however, that failure by the Bank to make any such endorsement shall not affect the obligations of the Borrower hereunder or under the Note in respect of unpaid principal and interest on the Loans. The Bank shall maintain in accordance with its usual practice an account evidencing the indebtedness of the Borrower to the Bank resulting from the Loans, including the amounts of principal and interest payable and paid to the Bank from time to time hereunder. The entries made in the account maintained pursuant to the preceding sentence shall be prima facie evidence of the

existence and amounts of the obligations recorded therein; *provided* that the failure of the Bank to maintain such account or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

#### **Section 2.4. Reduction and Termination of Commitment.**

(a) The Borrower may irrevocably elect to terminate the Commitment at any time prior to the Commitment Termination Date upon not less than three (3) Business Days' prior written notice to the Bank whereupon the Available Commitment shall permanently be reduced to \$0. In connection with any such termination, the Borrower shall pay the Bank all accrued and unpaid Commitment Fees.

(b) The Borrower may irrevocably elect to reduce the Available Commitment by a principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof at any time prior to the Commitment Termination Date upon not less than three (3) Business Days' prior written notice to the Bank whereupon the Available Commitment shall be permanently reduced by the amount requested.

**Section 2.5. Prepayment of Loans.** The Borrower may prepay any Loan, in whole or in part, at any time provided at least one (1) Business Days' prior written notice is given by the Borrower to the Bank. Each such notice shall specify the date and amount of such prepayment. Each such notice of optional prepayment may be conditional upon receipt of funds from refunding obligations to be issued by the Borrower or another party and, if such funds are not received, the Borrower shall have no obligation to make such prepayment. Any partial prepayment of Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding. All prepayments of principal shall include accrued interest on such principal to the date of prepayment and all other amounts relating to such principal prepayment due pursuant to this Agreement. Upon written request by the Borrower in connection with a proposed prepayment, the Bank shall promptly provide the Borrower with an accounting of the outstanding principal amount of all Loans and the interest accrued thereon to the proposed prepayment date(s). Notwithstanding anything to the contrary contained herein, the Borrower shall prepay all outstanding Loans together with accrued interest to the date of prepayment and all other amounts due pursuant to this Agreement immediately upon the receipt by the Borrower of the proceeds of any Indebtedness secured by the Collateral (other than the Loans) that is issued or incurred by the Borrower.

**Section 2.6. Repayment of Loans.** Subject to Section 7.2(b), one fifth of the aggregate principal amount of all Loans outstanding on the first Amortization Date, together with interest accrued thereon through such date, shall be repaid on the first Amortization Date to occur following the Effective Date. Subject to Section 7.2(b), one half of the aggregate principal amount of all Loans outstanding on the second Amortization Date, together with interest accrued thereon through such date, shall be repaid on the second Amortization Date to occur following the Effective Date. Subject to Section 7.2(b), the remaining aggregate principal amount of all Loans outstanding on the Maturity Date, together with interest accrued thereon through such date, shall be repaid in full on the Maturity Date.

**Section 2.7. Interest on Loans.** Subject to Section 2.9, prior to the occurrence of an Event of Taxability, each Loan made or maintained by the Bank shall bear interest on the unpaid principal amount thereof at a rate per annum equal to: (a) prior to Amortization Period, eighty percent (80%)

of the Daily SOFR Rate or the Base Rate, as applicable, plus the Applicable Margin and (b) during the Amortization Period, the Base Rate. Subject to Section 2.9, following the occurrence of an Event of Taxability, each Loan made or maintained by the Bank shall bear interest during each period it is outstanding on the unpaid principal amount thereof at a rate per annum equal to: (i) prior to Amortization Period, one hundred percent (100%) of the Daily SOFR Rate or the Base Rate, as applicable, plus the Applicable Margin and (ii) during the Amortization Period, the Base Rate. Interest on each Loan shall be payable by the Borrower on each Interest Payment Date; *provided, however*, that on or prior to the Commitment Maturity Date, accrued and unpaid interest on each Loan shall be capitalized and added to the principal of such Loan on each Interest Payment Date and on the Commitment Maturity Date by means of a Repayment Loan which shall automatically be deemed made on each such date in the amount of interest due. Notwithstanding anything to the contrary contained herein, upon and during the continuance of an Event of Default or an Event of Termination, the Borrower shall pay interest on the principal amount of all outstanding Loans, as evidenced by the Note, and all other Obligations under this Agreement at the Default Rate to the fullest extent permitted by Applicable Law, payable on demand. The Bank agrees to give notice to the Borrower if the Default Rate becomes payable as promptly as reasonably practicable thereafter; *provided, however*, that the failure by the Bank to provide prompt notice shall not affect the Bank's right to charge interest at such rate.

**Section 2.8. Commitment Fees.** The Borrower agrees to pay to the Bank, in immediately available funds, for the period from and including the Effective Date to and excluding the Commitment Maturity Date, in arrears on the first Business Day of each January, April, July and October and on the Commitment Maturity Date, a non-refundable fee (the "Commitment Fee") in an amount equal for each day during such calculation period to the product of the Unutilized Commitment and the Commitment Fee Rate by means of a Repayment Loan which shall automatically be deemed made on each such date in the amount of Commitment Fee due.

**Section 2.9. Maximum Interest Rate; Payment of Fee.** If the rate of interest payable hereunder with respect to any Loan, the Note or any other Obligations hereunder shall exceed the Maximum Lawful Rate for any period for which interest is payable, then (a) interest at such Maximum Lawful Rate shall be due and payable with respect to such period and (b) interest at the rate equal to the difference between (i) the rate of interest calculated in accordance with the terms hereof and thereof and (ii) such Maximum Lawful Rate (the "Excess Interest"), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed such Maximum Lawful Rate, at which time the Borrower shall pay or cause to be paid to the Bank, with respect to any Loan, the Note or any other Obligations hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal such Maximum Lawful Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid Loan, the Note or any other Obligations hereunder until all deferred Excess Interest is fully paid to the Bank. On the date on which no principal amount with respect to the Obligations or the Note remains unpaid, in consideration for any limitation of the rate of interest which may otherwise be payable hereunder, the Borrower shall pay or cause to be paid to the Bank a fee equal to the amount of all unpaid deferred Excess Interest (the "Excess Interest Fee").

**Section 2.10. Payments and Computations.** All payments to be made by the Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. The Borrower shall make or cause to be made each payment hereunder not later than 11:00 a.m. on the day when due, in lawful money of the United States of America to the Bank Account in immediately available funds; *provided, however*, that whenever any payment

hereunder shall be due on a day that is not a Business Day, the date for payment thereof shall be extended to the next succeeding Business Day, and any interest payable thereon shall be payable for such extended time. Payment received by the Bank after the applicable time set forth in this Section 2.10 shall be considered to have been made on the next succeeding Business Day. All computations of interest payable by the Borrower on Daily SOFR Rate Loans shall be computed on the basis of a year of 360 days and the actual days elapsed and all computations of interest payable by the Borrower on Base Rate Loans shall be computed on the basis of a year of 365 days and the actual days elapsed. Interest shall accrue during each period during which interest is computed from and including the first day thereof to but excluding the last day thereof. All computations of fees payable by the Borrower hereunder shall be made on the basis of a 360-day year but calculated on the actual number of days elapsed. Unless otherwise provided herein, any amount payable by the Borrower hereunder that is not paid when due shall bear interest at the Default Rate and shall be payable upon demand of the Bank.

**Section 2.11. Collateral.** To provide security to the Bank for the payment by the Borrower of the Obligations, the Borrower hereby pledges to the Bank a first priority security interest in and over the Collateral and the amounts on deposit from time to time in the Collateral Account.

**Section 2.12. Limited Obligations.** The obligations of the Borrower under this Agreement and the Note are limited obligations of the Borrower payable solely from the Collateral and the amounts on deposit from time to time in the Collateral Account. The obligations of the Borrower under this Agreement and the Note are not general obligations of the Borrower and the revenues, funds and assets, real or personal of the Borrower (other than the Collateral and the amounts on deposit from time to time in the Collateral Account) are not pledged for or required for the payment of any amounts due under this Agreement and the Note. The obligations of the Borrower under this Agreement and the Note are not, and shall not be or become, a debt, liability or obligation of the State or any political subdivision of the State (other than the Borrower, to the limited extent set forth herein) or a pledge of the faith and credit of the State or of a political subdivision of the State. The Borrower has no taxing power. The obligations of the Borrower under this Agreement and the Note are subject to continued Authorization, appropriation by the United States Congress of funds for programs authorized under 49 U.S.C. §5307 or 49 U.S.C. §5337 in each Federal Fiscal Year and apportionment by the FTA of such funds so appropriated by the United States Congress in each Federal Fiscal Year.

### **ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY**

#### **Section 3.1. Taxes.**

(a) *Payments Free of Taxes.* Any and all payments by or on account of any obligation of the Borrower hereunder or under the Note shall be made free and clear of and without deduction for any and all present or future Reimbursed Taxes or Other Taxes; *provided* that if the Borrower shall be required by Applicable Law to deduct any Reimbursed Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.1) the Bank receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with Applicable Law.



(b) *Other Taxes; Reimbursement by the Borrower.* Without limiting the provisions of paragraph (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law and shall also, to the fullest extent permitted by law, reimburse the Bank, within ninety (90) days after demand therefor, for the full amount of any Reimbursed Taxes or Other Taxes (including Reimbursed Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 3.1) paid by the Bank and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Reimbursed Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; *provided* that the Borrower shall not be obligated to reimburse the Bank for any penalties, interest or expenses relating to Reimbursed Taxes or Other Taxes arising from the Bank's gross negligence or willful misconduct. The Bank agrees to give notice to the Borrower of the assertion of any claim against it relating to Reimbursed Taxes and Other Taxes as promptly as reasonably practicable after being notified of such claim; *provided, however,* that the failure by the Bank to provide prompt notice shall not affect the Bank's rights under this Section 3.1. In addition, the Borrower shall reimburse the Bank, within thirty (30) days after demand therefor, for any incremental Taxes that may become payable by the Bank as a result of any failure of the Borrower to pay any Taxes when due to the appropriate Governmental Authority or to deliver to the Bank pursuant to clause (c) of this Section 3.1, documentation evidencing the payment of Taxes, *provided* that, if there are not sufficient funds on deposit in the Collateral Account to satisfy any amounts due under this Section 3.1, the Borrower hereby covenants to promptly request MTC to reprogram, to the extent permitted by law, Apportioned Section 5307 Formula Funds and Apportioned Section 5337 Formula Funds in an amount sufficient to pay all such amounts due under this Section 3.1. In each case, any demand made by the Bank pursuant to this Section 3.1(b) shall be accompanied by a certificate stating in reasonable detail the basis for and the amount of such payment or liability demanded, which certificate shall be conclusive absent manifest error.

(c) *Evidence of Payments.* As soon as practicable after any payment of Reimbursed Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Bank the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Bank, as applicable.

**Section 3.2. Illegality.** If the Bank determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Bank to make, maintain or fund or charge interest with respect to any Daily SOFR Rate Loan, or to determine or charge interest rates based upon SOFR, or to purchase or sell, or to take deposits of, Dollars in the applicable interbank market, then, upon notice thereof by the Bank to the Borrower, any obligation of the Bank to make, maintain, fund or charge interest with respect to any such Daily SOFR Rate Loan shall, in each case, be suspended until the Bank notifies the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, all Daily SOFR Rate Loans shall automatically convert to, and become, Base Rate Loans until such time as the Borrower is advised in writing by the Bank that it is no longer illegal for the Bank to determine or charge interest rates based upon SOFR whereupon all outstanding Base Rate Loans shall automatically convert to, and become, Daily SOFR Rate Loans without further action.

### **Section 3.3. Inability to Determine Rates.**

(a) *Inability to Determine Rates.* If in connection with any request for a Daily SOFR Rate Loan, (i) the Bank determines (which determination shall be conclusive absent manifest error) that (A) no SOFR Successor Rate for SOFR has been determined in accordance with Section 3.3(b) and the circumstances under clause (i) of Section 3.3(b) or the SOFR Scheduled Unavailability Date (as applicable) has occurred with respect to SOFR, or (y) adequate and reasonable means do not otherwise exist for determining SOFR for any determination date(s) or requested payment period, as applicable, with respect to a proposed Daily SOFR Rate Loan, or (ii) the Bank determines that for any reason that the Daily SOFR Rate with respect to a proposed Loan for any requested determination date(s) does not adequately and fairly reflect the cost of funding such Daily SOFR Rate Loan, the Bank will promptly so notify the Borrower. Thereafter, the obligation of the Bank to make or maintain Daily SOFR Rate Loans shall be suspended in each case until the Bank revokes such notice. Upon receipt of such notice, (1) the Borrower may revoke any pending request for a borrowing of a Daily SOFR Rate Loan, or failing that, will be deemed to have converted such request into a request for a borrowing of Base Rate Loans of the amount specified therein, and (2) any outstanding Daily SOFR Rate Loans shall be deemed to have been converted to Base Rate Loans immediately.

(b) *Replacement of SOFR or SOFR Successor Rates.* Notwithstanding anything to the contrary in this Agreement, if the Bank determines (which determination shall be conclusive absent manifest error), or the Borrower notifies the Bank that the Borrower has determined, that:

(i) adequate and reasonable means do not exist for ascertaining SOFR because SOFR is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) the Applicable Authority has made a public statement identifying a specific date after which SOFR shall or will no longer be made available, or permitted to be used for determining the interest rate of loans denominated in Dollars, or shall or will otherwise cease, provided that, in each case, at the time of such statement, there is no successor administrator that is satisfactory to the Bank that will continue to provide SOFR (the date on which SOFR is no longer available permanently or indefinitely, the “SOFR Scheduled Unavailability Date”);

or if the events or circumstances of the type described in clauses (i) or (ii) above have occurred with respect to the SOFR Successor Rate then in effect, then, the Bank and the Borrower may jointly amend this Agreement and the other Related Documents solely for the purpose of replacing SOFR or any then current SOFR Successor Rate in accordance with this Section 3.3 with an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar credit facilities in the U.S. and denominated in Dollars for such alternative benchmarks, and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar credit facilities in the U.S. and denominated in Dollars for such benchmarks, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Bank from time to time in its reasonable discretion and may be periodically updated (and any such proposed rate, including for the avoidance of doubt, any adjustment thereto, a “SOFR Successor Rate”), and any such amendment shall become effective at 2:00 p.m. on the fifth Business Day after the Bank shall have delivered such proposed amendment to the Borrower.

(c) *Successor Rate*. The Bank will promptly (in one or more notices) notify the Borrower of the implementation of any SOFR Successor Rate. Such SOFR Successor Rate shall be applied in a manner consistent with market practice; *provided* that to the extent such market practice is not administratively feasible for the Bank, such SOFR Successor Rate shall be applied in a manner as otherwise reasonably determined by the Bank with notice to the Borrower. Notwithstanding anything else herein, if at any time any SOFR Successor Rate as so determined would otherwise be less than zero percent (0.00%), the SOFR Successor Rate will be deemed to be zero percent (0.00%) for the purposes of this Agreement and the Note.

(d) *Conforming Changes*. In connection with the implementation of a SOFR Successor Rate, the Bank will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in the Note, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement; *provided* that, with respect to any such amendment effected, the Bank shall deliver each such amendment implementing such Conforming Changes to the Borrower reasonably promptly after such amendment becomes effective.

#### **Section 3.4. Increased Costs; Capital Adequacy.**

(a) *Increased Costs Generally*. If any Change in Law shall: (i) impose, modify or deem applicable any reserve, liquidity, special deposit compulsory loan, insurance charge or similar requirement against funding or maintaining any Loan, or complying with any term of this Agreement, or against assets held by, or deposits with or for the account of, the Bank; (ii) subject the Bank to any taxes on its loans, loan principal, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or (iii) impose on the Bank or any applicable interbank market any other condition, cost or expense affecting this Agreement or Daily SOFR Rate Loans made by the Bank hereunder, and the result of any event referred to in clause (i), (ii) or (iii) above shall be to increase the cost to the Bank of making, converting to, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by the Bank hereunder, then, upon demand by the Bank and in accordance with Section 3.4(c), the Borrower shall pay to the Bank for its own account, such additional amount or amounts as will compensate the Bank for such additional costs incurred or reduction suffered.

(b) *Capital Requirements*. If the Bank shall have determined that any Change in Law affecting the Bank or the Bank's Office or the Bank's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on the Bank's capital or on the capital of the Bank's holding company, if any, as a consequence of this Agreement, the Commitment or the Loans made by the Bank, to a level below that which the Bank or the Bank's holding company could have achieved but for such Change in Law (taking into consideration the Bank's policies and the policies of the Bank's holding company with respect to capital adequacy), then, upon demand by the Bank and in accordance with Section 3.4(c), the Borrower will pay to the Bank such additional amount or amounts as will compensate the Bank or the Bank's holding company for any such reduction suffered in the rate of return on the capital or liquidity of the Bank or the Bank's holding company, if any.

(c) *Certificates for Reimbursement*. The Bank shall use commercially reasonable efforts to notify the Borrower within ninety (90) days after it incurs any such increased cost, increased capital or liquidity, or reduction in return incurred by the Bank as a result of any event mentioned

in clause (a) or (b) for which it has actual knowledge; *provided, however*, that a failure by the Bank to deliver the foregoing notice to the Borrower shall in no event relieve the Borrower of any obligation under clauses (a) and (b), except as provided in paragraph (d) of this Section 3.4. All payments of amounts referred to in clause (a) and (b) above shall be paid by the Borrower to the Bank within thirty (30) days of such demand, *provided* that, if there are not sufficient funds on deposit in the Collateral Account to satisfy any amounts due under Section 3.4(a) or Section 3.4(b), the Borrower hereby covenants to promptly request MTC to reprogram, to the extent permitted by law, Apportioned Section 5307 Formula Funds and Apportioned Section 5337 Formula Funds in an amount sufficient to pay all such amounts due under this Section 3.3. A certificate as to such increased cost, increased capital or liquidity, or reduction in return incurred by the Bank as a result of any event mentioned in clause (a) or (b) of this subsection setting forth, in reasonable detail, the basis for calculation and the amount of such calculation shall be submitted by the Bank to the Borrower simultaneously with such demand for payment and shall be conclusive as to the amount thereof absent manifest error. In making the determinations contemplated by the above-referenced certificate, the Bank may make such reasonable estimates, assumptions, allocations and the like that it in good faith determines to be appropriate.

(d) *Delays in Requests.* Failure or delay on the part of the Bank to demand compensation pursuant to the foregoing provisions of this Section 3.4 will not constitute a waiver of the Bank's right to demand such compensation; *provided, however*, that the Borrower will not be required to compensate the Bank pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than one hundred eighty (180) days prior to the date that the Bank notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of the Bank's intention to claim compensation therefor; *provided further that*, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the one hundred eighty (180) day period referred to above will be extended to include the period of retroactive effect thereof.

### **Section 3.5. Tax Event.**

(a) In the event a Tax Event occurs, in addition to the amounts required to be paid with respect to any affected Loans by the Borrower under this Agreement and the Note, the Borrower hereby agrees to pay to the Bank and each of its successors, assigns and Participants (each, a "Beneficial Owner") with respect to the affected Loans of the Borrower pursuant to this Agreement and the other Related Documents, on demand therefor (i) an amount equal to the difference between (A) the amount of interest that would have been paid to such Beneficial Owner with respect to the affected Loans during the period for which interest on the affected Loans is includable in the gross income of such Beneficial Owner if the affected Loans had borne interest at the Taxable Rate, beginning on the Taxable Date (the "Taxable Period"), and (B) the amount of interest actually paid to the Beneficial Owner during the Taxable Period, and (ii) an amount equal to any interest, penalties or charges owed by such Beneficial Owner as a result of interest on the affected Loans becoming includable in the gross income of such Beneficial Owner, together with any and all attorneys' fees, court costs, or other out-of-pocket costs incurred by such Beneficial Owner in connection therewith.

(b) Subject to the provisions of clauses (c) and (d) below, such Beneficial Owner shall afford the Borrower the opportunity, at the Borrower's sole cost and expense, to contest (i) the validity of any amendment to the Code which causes the interest on the affected Loans (or any one of them) to be includable in the gross income of such Beneficial Owner or (ii) any challenge to the

validity of the tax exemption with respect to the interest on the affected Loans (or any one of them), including the right to direct the necessary litigation contesting such challenge (including administrative audit appeals).

(c) The following shall constitute conditions precedent to the exercise by the Borrower of its right to contest set forth in subsection (b) above: the Borrower shall, on demand, immediately reimburse such Beneficial Owner for any and all expenses (including attorneys' fees for services that may be required or desirable, as determined by such Beneficial Owner in its sole discretion) that may be incurred by such Beneficial Owner in connection with any such contest, and shall, on demand, immediately reimburse such Beneficial Owner for any and all penalties or other charges payable by such Beneficial Owner for failure to include such interest in its gross income.

**Section 3.6. Survival.** All of the obligations of the Borrower contained in this Article III shall survive the termination of the Available Commitment, the repayment of all Obligations and the Maturity Date.

#### **ARTICLE IV CONDITIONS PRECEDENT**

**Section 4.1. Conditions to Effectiveness.** This Agreement will become binding on the parties hereto upon the fulfillment of the following conditions precedent on or before the Effective Date in form and substance and in a manner satisfactory to the Bank:

(a) The Bank shall have received:

(i) The original Note executed by an Authorized Officer;

(ii) A complete copy (including attachments, appendices, schedules and exhibits) of each of the Related Documents (other than this Agreement and the Note) certified by an Authorized Officer as being true and complete and in full force and effect on the Effective Date;

(iii) A copy of the Authorizing Resolution approving this Agreement, the other Related Documents to which the Borrower is a party and the transactions contemplated hereby and thereby certified by the Secretary of the Borrower as being true and complete and in full force and effect on the Effective Date;

(iv) A copy of the joint exercise of powers agreement of the Borrower certified by the Secretary of the Borrower as being true and complete and in full force and effect on the Effective Date (the "Joint Powers Agreement");

(v) A certificate of Secretary of the Borrower stating the names and certifying the true signatures of the Authorized Officers authorized to sign this Agreement, the other Related Documents to which the Borrower is a party and the other documents to be delivered by the Borrower hereunder or thereunder;

(vi) A certificate or certificates of the Borrower stating that on or as of the Effective Date: (A) no event has occurred and is continuing, or would result from the execution and delivery of this Agreement and the Notice, which constitutes an Event of Default or would constitute an Event of Default but for the requirement that notice be given or time elapse

or both; (B) no “event of default” has occurred and is continuing, and no event has occurred that with the giving of notice or lapse of time or both would constitute an “event of default”, under any Related Document (other than this Agreement or the Note); (C) after giving effect to the execution and delivery of this Agreement and the other Related Documents, all representations and warranties of the Borrower contained herein and in the other Related Documents shall be true and correct with the same force and effect as though such representations and warranties had been made on and as of the Effective Date; and (D) since June 30, 2022, no change has occurred in the financial position, results of operations or prospects of the Borrower which in the reasonable opinion of the Borrower would have a Material Adverse Effect;

(vii) A copy of the authorizing resolution of MTC approving the Related Documents to which MTC is a party and the transactions contemplated thereby certified by the Secretary of MTC as being true and complete and in full force and effect on the Effective Date;

(viii) The following opinions:

(A) An opinion of Nixon Peabody LLP, counsel to the Borrower, dated the Effective Date and addressed to the Bank, in form and substance satisfactory to the Bank and its counsel and addressing, such matters as the Bank may reasonably request;

(B) An opinion of counsel to MTC, dated the Effective Date and addressed to the Bank, opining that (1) MTC has the power and authority to enter into the Related Documents to which it is a party (the “MTC Documents”), (2) MTC has exercised such power, (3) the MTC Documents have been executed and delivered by MTC, (4) the MTC Documents are valid binding obligations of MTC enforceable in accordance with their terms (subject to customary exceptions), (5) no authorization, consent or approval or other action by, and no notice to or filing with, any Governmental Authority or other Person is required in connection with the due execution, delivery and performance by MTC of any MTC Document, other than those that have been obtained or made and remain in full force and effect, and (6) the execution, delivery and performance by MTC of each MTC Document do not contravene any applicable Law or any contractual restriction binding on or affecting it or any of its Property;

[(C) An opinion of counsel to BART, dated the Effective Date and addressed to the Bank, opining that (1) BART has the power and authority to enter into the Related Documents to which it is a party and the Railcar Agreement (the “BART Documents”), (2) BART has exercised such power, (3) the BART Documents have been executed and delivered by BART, (4) the BART Documents are valid binding obligations of BART enforceable in accordance with their terms (subject to customary exceptions), (5) no authorization, consent or approval or other action by, and no notice to or filing with, any Governmental Authority or other Person is required in connection with the due execution, delivery and performance by BART of any BART Document, other than those that have been obtained or made and remain in full force and effect, and (6) the execution, delivery and performance by BART of each BART Document do not contravene any applicable

Law or any contractual restriction binding on or affecting it or any of its Property;  
and]

(D) An opinion of Orrick, Herrington & Sutcliffe, LLP, special tax counsel, addressed to the Borrower and dated the Effective Date, to the effect that the interest on the Loans evidenced by the Note is excludable from gross income for federal income tax purposes, together with a reliance letter, addressed to the Bank and dated the Effective Date, stating that the Bank may rely upon such opinion to the same extent as if such opinion were addressed to the Bank;

(ix) A certificate of an Authorized Officer certifying that there is no litigation pending or, to the knowledge of the Borrower's General Counsel, threatened against the Borrower contesting or adversely affecting the execution and delivery of this Agreement or any Related Document to which the Borrower is a party, the proceedings of the Borrower taken with respect to the execution and delivery of this Agreement and the Related Documents or the pledge of the Collateral; and

(x) Such other documents, certificates, opinions, approvals and filings with respect to the Related Documents and this Agreement as the Bank may reasonably request.

(b) All other legal matters pertaining to the execution and delivery of this Agreement and the other Related Documents shall be reasonably satisfactory to the Bank and its counsel.

(c) The Borrower shall have provided to the Bank, and the Bank shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act.

(d) The Borrower shall have provided MTC with an irrevocable written instruction to pay all Programmed Grant Receipts to the Collateral Account (the "Written Instruction") and MTC shall have acknowledged receipt of the same.

(e) The Collateral Account shall have been established with the Bank and the Borrower and the Bank shall have entered into a deposit account control agreement with respect thereto (the "Collateral Account Control Agreement").

(f) The Bank shall have received from the Borrower an initial Request for Loan in an amount equal to (i) the upfront fee payable to the Bank on the Effective Date of \$450,000 and (ii) the fees and expenses of counsel to Bank, which Request for Loan shall include instructions to pay such amounts to the Bank and its counsel.

**Section 4.2. Conditions Precedent to Each Loan.** The obligation of the Bank to make a Loan on any borrowing date is subject to satisfaction of the following conditions precedent:

(a) The Commitment has not terminated or been suspended;

(b) Except for Loans that are Repayment Loans, the Bank shall have received a completed Request for Loan signed by an Authorized Officer;

(c) No Event of Insolvency has occurred and is continuing with respect to BART;

(d) No Default or Event of Default shall have occurred and be continuing or would result from the making of such Loan or from the application of the proceeds thereof;

(e) Each of the representations and warranties of the Borrower set forth herein and in the other Related Documents to which it is a party shall be and remain true and correct in all material respects as of said borrowing date as if made on such borrowing date, except for any such representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be and remain true and correct in all respects as of said borrowing date as if made on such borrowing date (except for any representation or warranty that by its terms expressly relates to an earlier date, in which case such representation and warranty shall be and remain true and correct in all material respects as of such earlier date, except for any such representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be and remain true and correct in all respects as of said earlier date); and

(f) The amount of the Loan requested (or, in the case of a Repayment Loan, deemed requested) shall not exceed the Available Commitment.

Unless the Borrower shall have otherwise previously advised the Bank in writing, delivery to the Bank of a Request for Loan shall be deemed to constitute a representation and warranty by the Borrower that on the date of such Request for Loan and on the date of the proposed Loan that each of the above conditions precedent have been satisfied; *provided, however*, that with respect to the condition set forth in clause (c) of this Section 4.2, the representation and warranty by the Borrower is qualified by the knowledge of the Borrower. The making of a Repayment Loan shall be deemed to constitute a representation and warranty by the Borrower that on the date of such Loan each of the above conditions precedent have been satisfied.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES**

The Borrower represents and warrants that as of the Effective Date:

**Section 5.1. Existence.** The Borrower is a joint exercise of powers agency duly organized, validly existing and in good standing under the Laws of the State and has the power and authority to own its properties and to carry on its businesses as now being conducted and as currently contemplated to be conducted hereafter and is duly qualified to do business in each jurisdiction in which the character of the properties owned or leased by it or in which the transactions of any material portion of its business (as now conducted and as currently contemplated to be conducted) makes such qualification necessary.

### **Section 5.2. Power and Authority.**

(a) The Borrower has the right, power and authority, and has taken all action necessary to authorize the Related Documents to which it is a party, and to execute, deliver and perform its obligations under this Agreement and each of the other Related Documents to which it is a party in accordance with their respective terms, including the pledge of the Collateral contained herein. The Borrower has approved the form of the Related Documents to which it is not a party.



(b) The Borrower is duly authorized and licensed to own its Property and to operate its business under the laws, rulings, regulations and ordinances of all Governmental Authorities having the jurisdiction to license or regulate such Property or business activity and the departments, agencies and political subdivisions thereof, and the Borrower has obtained all requisite approvals of all such governing bodies required to be obtained for such purposes. All Governmental Approvals necessary for the Borrower to enter into this Agreement and the other Related Documents and to perform the transactions contemplated hereby and thereby and to conduct its business activities and own its Property have been obtained and remain in full force and effect and are subject to no further administrative or judicial review. No other Governmental Approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance by the Borrower of this Agreement or the due execution, delivery or performance by the Borrower of the Related Documents.

**Section 5.3. Compliance with Laws.** The Borrower is in compliance with all Laws, except for such noncompliance that, singly or in the aggregate, has not caused or is not reasonably expected to cause a Material Adverse Effect.

**Section 5.4. Binding Obligation.** This Agreement has been duly executed and delivered by one or more duly authorized officers of the Borrower, and each of the other Related Documents to which the Borrower is a party, when executed and delivered by the Borrower will be, a legal, valid and binding obligation of the Borrower enforceable in accordance with its terms, except as such enforceability may be limited by (i) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally, and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**Section 5.5. No Conflict.** The execution, delivery and performance of this Agreement and each of the other Related Documents to which it is a party in accordance with their respective terms do not and will not (a) contravene the Borrower's joint powers agreement or the Joint Exercise of Powers Act (California Government Code Sections 6500 et seq.) or the Authorizing Resolution, (b) require any consent or approval of any creditor of the Borrower (other than those that have been obtained), (c) violate any Laws (including, without limitation, Regulations T, U or X of the FRB, or any successor regulations), (d) conflict with, result in a breach of or constitute a default under any contract to which the Borrower is a party or by which it or any of its Property may be bound or (e) result in or require the creation or imposition of any Lien upon or with respect to any Property now owned or hereafter acquired by the Borrower or any Affiliate thereof except such Liens, if any, expressly created by a Related Document.

**Section 5.6. No Litigation.** There is no action, suit or proceeding pending in any court, any other Governmental Authority with jurisdiction over the Borrower or any arbitration in which service of process has been completed against the Borrower or, to the knowledge of the Borrower, any other action, suit or proceeding pending or threatened in any court, any other Governmental Authority with jurisdiction over the Borrower or any arbitrator, in either case against the Borrower or with respect to validity or enforceability of the Authorizing Resolution, this Agreement or any of the other Related Documents, which if determined adversely to the Borrower could reasonably be expected to adversely affect in any material aspect the legality, validity or enforceability of the Authorizing Resolution, this Agreement or any of the other Related Documents or the rights and remedies of the Bank under this Agreement or any of the other Related Documents or which could reasonably be expected to have a Material Adverse Effect.

**Section 5.7. Approvals and Consents.** The Borrower is duly authorized and licensed to own its Property and to operate its business under the laws, rulings, regulations and ordinances of all Governmental Authorities having the jurisdiction to license or regulate such Property or business activity and the departments, agencies and political subdivisions thereof, and the Borrower has obtained all requisite approvals of all such governing bodies required to be obtained for such purposes. All Governmental Approvals necessary for the Borrower to enter into this Agreement and the other Related Documents and to perform the transactions contemplated hereby and thereby and to conduct its business activities and own its Property have been obtained and remain in full force and effect and are subject to no further administrative or judicial review. No other Governmental Approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance by the Borrower of this Agreement or the due execution, delivery or performance by the Borrower of the Related Documents.

**Section 5.8. Financial Statements.** The Audited Financial Statements for the fiscal year of the Borrower ended June 30, 2022, heretofore furnished to the Bank, fairly present the financial condition of the Borrower as a component business unit of MTC in all material respects as of June 30, 2022 and the results of its operations for the twelve (12) month period then ended in conformity with GAAP. Since the most recent Audited Financial Statements delivered to the Bank, there has been no material adverse change in the financial condition or operations of the Borrower that could reasonably be expected to have a Material Adverse Effect.

**Section 5.9. Incorporation of Representations and Warranties by Reference.** The representations and warranties of the Borrower contained in the other Related Documents to which the Borrower is a party, together with the related definitions of terms contained therein, are hereby incorporated by reference in this Agreement as if each and every such representation and warranty and definition were set forth herein in its entirety, and the representations and warranties made by the Borrower in such Sections are hereby made for the benefit of the Bank (except for any representation or warranty that by its terms expressly relates to an earlier date, in which case such representation and warranty shall be and remain true and correct in all material respects as of such earlier date). No amendment to or waiver of such representations and warranties or definitions made pursuant to the relevant Related Document or incorporated by reference shall be effective to amend such representations and warranties and definitions as incorporated by reference herein without the prior written consent of the Bank.

**Section 5.10. No Default or Event of Default.** No Default or Event of Default has occurred and is continuing. No default by the Borrower has occurred and is continuing in the payment of the principal of or premium, if any, or interest on any Indebtedness. No bankruptcy, insolvency or other similar proceedings pertaining to the Borrower or any agency or instrumentality of the Borrower are pending or presently contemplated. No Default or Event of Default has occurred and is continuing hereunder. No “default” or “event of default” under, and as defined in, any of the other Related Documents has occurred and is continuing. The Borrower is not presently in default under any material agreement to which it is a party which could reasonably be expected to have a Material Adverse Effect. The Borrower is not in violation of any material term of the organizational documents or authorizing legislation applicable to the Borrower or any material term of any bond indenture or agreement to which it is a party or by which any of its Property is bound which could reasonably be expected to result in a Material Adverse Effect.

**Section 5.11. Cash Flows.** The cash flows attached hereto as Schedule 5.11 and delivered to the Bank on \_\_\_\_\_, 2023 were prepared using information provided to the Borrower by BART and MTC. The Borrower is not aware of any fact, circumstance or event that would render the cash flows inaccurate as of the date delivered to the Bank.

**Section 5.12. Use of Proceeds; Margin Regulations.** The Borrower will not use the proceeds of the Loans for any purposes other than (i) providing funds to MTC to satisfy BART requisitions made in accordance with the terms of the BART T&R Agreement; (ii) paying capitalized interest on the Loans; and (iii) paying fees and other Obligations (other than the principal of Loans). The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System).

**Section 5.13. Power to Sue and Be Sued.** The Borrower cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement or the Related Documents to which it is a party; *provided, however*, the Borrower is a public agency subject to the rules of procedure applicable to public agencies which differ from those applicable to other Persons.

**Section 5.14. Tax-Exempt Status.** The Borrower has not taken any action or omitted to take any action, and has no actual knowledge of any action taken or omitted to be taken by any other Person, which action, if taken or omitted, would adversely affect the exclusion of interest on the Loans from gross income for federal income tax purposes or the exemption of interest on the Loans from State personal income taxes.

**Section 5.15. Usury.** None of the payments required to be made by the Borrower pursuant to this Agreement violate any applicable law regarding permissible maximum rates of interest.

**Section 5.16. Security.** This Agreement creates for the exclusive benefit of the Bank a legally valid, binding and irrevocable Lien on and pledge of the Programmed Grant Receipts and all of the Borrower's rights (but not the Borrower's obligations) under the MTC Grant Funding Agreement (collectively, the "Collateral"). No filing, registration, recording or publication of this Agreement or any other instrument is required, and no further action on the part of the Borrower, the Bank or any Person is required, to establish the pledge provided for hereunder or to perfect, protect or maintain the Lien created hereby on the Collateral to secure the Loans and the other Obligations.

**Section 5.17. Pending Legislation and Decisions; No Public Vote or Referendum.** There is no amendment, or to the knowledge of the Borrower, proposed amendment to the Constitution of the State or any State law or any administrative interpretation of the Constitution of the State or any State law, or any legislation that has passed either house of the legislature of the State, or any judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to result in a Material Adverse Effect. There is no public vote or referendum pending, proposed or concluded, the results of which could reasonably be expected to result in a Material Adverse Effect.

### **Section 5.18. Sanctions Concerns and Anti-Corruption Laws.**

(a) *Sanctions Concerns.* Neither the Borrower, nor, to the knowledge of the Borrower, any director or officer thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

(b) *Anti-Corruption Laws.* The Borrower has conducted its business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

**Section 5.19. Taxes.** The Borrower has filed or caused to be filed, if any, all material tax returns required by law to be filed and has paid or caused to be paid all material taxes, assessments and other governmental charges levied upon or in respect of any of its properties, assets or franchises, other than taxes the validity or amount of which are being contested in good faith by the Borrower by appropriate proceedings and for which the Borrower shall have set aside on its books adequate reserves in accordance with GAAP.

**Section 5.20. ERISA.** The Borrower is not subject to ERISA and maintains no Employee Plans.

**Section 5.21. Federal Funds Eligibility.** The Borrower is not precluded from receiving federal funds from the FTA.

**Section 5.22. Title to Assets; No Liens; No Indebtedness.** The Borrower has good and marketable title to its assets (including the Collateral) except where the failure to have good and marketable title to any of its assets (excluding therefrom the Collateral) would not have a Material Adverse Effect. The Collateral is not subject to any Lien other than Lien created by this Agreement. Except for this Agreement, the Borrower has no Indebtedness (including any Swap Contract) secured by the Collateral, and has not entered into any agreement or commitment to issue or incur Indebtedness (including any Swap Contract) secured by the Collateral.

**Section 5.23. Solvency.** The Borrower is solvent and is able to pay its debts as they become due.

## **ARTICLE VI COVENANTS**

The Borrower agrees that so long as the Commitment hereunder remains outstanding or any amount payable hereunder remains unpaid:

**Section 6.1. Preservation of Corporate Existence, Etc.** The Borrower shall preserve and maintain its existence pursuant to the Act and the Laws of the State and shall not merge, dissolve, liquidate, consolidate with or into another Person; provided that, for the avoidance of doubt, a new member joining BAIFA in accordance with the terms of the Joint Powers Agreement shall not constitute a merger, dissolution, liquidation or consolidation for purposes of this Section.

**Section 6.2. Compliance with Laws.** The Borrower shall comply with and observe the obligations and requirements set forth in the Act, in all other Laws and all orders, writs, injunctions and decrees applicable to it or to its business or Property, except in such instances in which: (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect. Without limiting the foregoing, the Borrower shall comply with all applicable Laws of the United States of America and regulations of the FTA relating to the Section 5307 Formula Funds and Section 5337 Formula Funds in order to be eligible to receive Programmed Grant Receipts for the payment of the principal of and interest on the Loans and all other Obligations.

**Section 6.3. Books and Records.** The Borrower shall maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Borrower.

**Section 6.4. Visits and Inspections.** To the extent permitted by Law, the Borrower will permit any Person designated by the Bank (at the expense of the Bank) to visit any of the offices of the Borrower upon prior written notice and during reasonable business hours to examine the books and financial records (except books and financial records the examination of which by the Bank is prohibited by Law), including minutes of meetings of any relevant governmental committees or agencies, and make copies thereof or extracts therefrom (at the expense of the Bank), and to discuss the affairs, finances and accounts of the Borrower with their principal officials as such relate to the Loans and the other Obligations, this Agreement and the other Related Documents, all at such reasonable times and as often as the Bank may reasonably request, and in such manner as not to disrupt the normal business operations of the Borrower; *provided, however*, if an Event of Default has occurred and is existing such expenses shall be paid by the Borrower.

**Section 6.5. Litigation Notice.** As promptly as practicable, the Borrower shall furnish or cause to be furnished to the Bank written notice of all litigation served against the Borrower and all proceedings before any court or Governmental Authority contesting or affecting the validity or enforceability of this Agreement or any other Related Document or any material provision hereof or thereof.

**Section 6.6. Further Assurances.** From time to time hereafter, the Borrower will execute and deliver such additional instruments, certificates or documents, and will take all such actions as the Bank may reasonably request for the purposes of implementing or effectuating the provisions of this Agreement and the other Related Documents or for the purpose of more fully evidencing or renewing the rights of the Bank with respect to this Agreement and the other Related Documents. Upon the exercise by the Bank of any power, right, privilege or remedy pursuant to this Agreement (including pursuant to Section 7.2(b) and/or Section 7.2(c)) and the other Related Documents which requires any consent, approval, registration, qualification or authorization of any Governmental Authority or instrumentality, the Borrower will, to the extent permitted by Law, execute and deliver all necessary applications, certifications, instruments and other documents and papers that the Bank may be required to obtain for such governmental consent, approval, registration, qualification or authorization.

## **Section 6.7. Information.**

(a) Commencing with the fiscal year of the Borrower beginning July 1, 2023 and for each fiscal year thereafter, the Borrower shall provide or cause to be provided to the Bank, the audited statement of net position of the Borrower, a component unit of MTC, at the end of such fiscal year, and the audited statement of revenues, expenses and changes in net position of the Borrower, a component unit of MTC, for the twelve (12) month period ended on the last day of such fiscal year, accompanied in each case by a report and opinion of an independent certified public accountant of recognized standing reasonably acceptable to the Bank (it being understood that Crowe LLP is reasonably acceptable to the Bank), which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any “going concern” or like qualification or exception or any qualification or exception as to the scope of such audit (collectively, the “Audited Financial Statements”), promptly after such Audited Financial Statements are available for distribution to the public and in any event not later than 210 days after the end of each such fiscal year;

(b) Commencing with the first Federal Fiscal Year that ends during the Amortization Period and for each Federal Fiscal Year thereafter, the Borrower shall provide, or cause MTC to provide, to the Bank, promptly after such information becomes available, (i) the amount of the appropriation by the United States Congress to FTA of Section 5307 Formula Funds and Section 5337 Formula Funds for such Federal Fiscal Year, (ii) the amount of the FTA apportionment to MTC of Section 5307 Formula Funds and Section 5337 Formula Funds that have been appropriated by the United States Congress for such Federal Fiscal Year and (iii) the amount of Apportioned Section 5307 Formula Funds and Apportioned Section 5337 Formula Funds that MTC has programmed, or proposes to program, to the Borrower for such Federal Fiscal Year.

(c) The Borrower shall promptly furnish to the Bank copies of any Communications it receives from MTC or BART pursuant to the Related Documents.

(d) The Borrower shall promptly, following any request therefor, provide such information and documentation as is reasonably requested by the Bank for purposes of compliance with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act.

(e) The Borrower shall, promptly upon the request of the Bank, furnish to the Bank such financial and other information with respect to the Borrower as the Bank may reasonably request.

**Section 6.8. Other Notices.** Promptly upon obtaining knowledge of any Default, Event of Default or Event of Suspension or notice thereof, and within five (5) Business Days thereafter, the Borrower shall furnish or cause to be furnished to the Bank copies of a certificate signed by an Authorized Officer specifying in reasonable detail the nature and period of existence thereof and, with respect to any Default or Event of Default, what action the Borrower has taken or proposes to take with respect thereto. Promptly following a written request of the Bank, the Borrower shall furnish to the Bank a certificate of an Authorized Officer as to the existence or absence, as the case may be, of a Default, an Event of Default or an Event of Suspension.

### **Section 6.9. Related Documents.**

(a) The Borrower shall perform and comply with each of its obligations under the Related Documents (other than this Agreement) to which it is a party, the provision of which other Related Documents, as well as related defined terms contained therein, are hereby incorporated by reference in this Section 6.8 with the same effect as if each and every such provision were set forth in this Section 6.8 in its entirety, all of which shall be deemed to be made for the benefit of the Bank from time to time.

(b) The Borrower shall not agree or consent to any amendment or modification or termination of any Related Document, nor waive any provision thereof without prior written consent of the Bank; *provided, however*, that the Borrower may agree or consent to amendments or modifications to the Related Documents without the written consent of (but with notice to) the Bank at any time and from time to time solely to the extent that such amendments or modifications are of an administrative nature only. The Borrower shall not revoke the Written Instruction without the prior written consent of the Bank.

**Section 6.10. Additional Indebtedness.** The Borrower shall not create, incur, assume or suffer to exist any Indebtedness secured by the Collateral (or any part thereof) other than (i) Loans under this Agreement, and (ii) other Indebtedness, the proceeds of which are sufficient to, and which are applied pursuant to Section 2.5 to, prepay in full, all outstanding and unpaid Obligations (a “Refinancing”).

**Section 6.11. Refinancing.** The Borrower shall use its commercially reasonable best efforts to cause a Refinancing to occur prior to commencement of the Amortization Period; *provided, however*, that the failure to cause a Refinancing to occur prior to commencement of the Amortization Period shall not constitute an Event of Default so long as the Borrower used its commercially reasonable best efforts in the pursuit thereof.

**Section 6.12. No Liens.** The Borrower shall not create, incur, assume or suffer to exist any Lien upon the Collateral or any portion thereof other than the Lien of this Agreement, *provided* that the Borrower may create a Lien upon the Collateral or any portion thereof in connection with a Refinancing as long as creation of such Lien is contemporaneous with the prepayment of all outstanding Obligations pursuant to Section 2.5.

**Section 6.13. Dispositions.** The Borrower shall not sell, assign or otherwise dispose of the Collateral.

**Section 6.14. Programmed Grant Receipts.** If for any reason the Borrower receives Programmed Grant Receipts other than by deposit by MTC to the Collateral Account, the Borrower shall promptly remit the same to the Collateral Account.

**Section 6.15. Use of Proceeds.** The Borrower shall use the proceeds of the Loans solely for the purposes described in Section 5.12 and not to purchase or carry Margin Stock. Without limiting the foregoing, the Borrower agrees not to use the proceeds of Loans in contravention of any Law (including Laws prohibiting the funding of any activities of or business with any Person, that, at the time of such funding, is the subject of Sanctions).

**Section 6.16. Anti-Corruption Laws; Sanctions.** The Borrower shall conduct its business in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other applicable anti-corruption legislation in other jurisdictions and with all applicable Sanctions, and maintain policies and procedures designed to promote and achieve compliance with such laws and Sanctions.

**Section 6.17. References to the Bank.** The Borrower shall not refer to the Bank in any offering document or make any changes in reference to the Bank in any offering document without the Bank's prior written consent thereto, such consent not to be unreasonably withheld or delayed.

## **ARTICLE VII EVENTS OF DEFAULT**

**Section 7.1. Events of Default.** The occurrence of any of the following shall constitute an "Event of Default" hereunder:

(a) the Borrower shall fail to pay (i) any Repayment Obligation as and when due hereunder, or (ii) any other Obligation as and when due hereunder and such failure shall continue for a period of thirty (30) days after written notice thereof;

(b) (i) the Borrower fails to perform or observe any term, covenant or agreement contained in Section 6.1, 6.8, 6.9(b), 6.10, 6.12, 6.13, 6.14 or 6.15 hereof; or (ii) the Borrower fails to perform or observe any other term, covenant or agreement contained in (or incorporated by reference into) this Agreement or any other Related Document to which it is a party and such failure remains uncured for ninety (90) days after the earlier of (A) the date any Authorized Officer becomes aware of such failure and (B) written notice thereof being delivered to the Borrower by the Bank;

(c) (i) any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower herein, in any other Related Document, or in any document delivered in connection herewith or therewith that is qualified by "materiality" or "Material Adverse Effect" shall be incorrect or misleading in any respect when made or deemed made; or (ii) any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower herein, in any other Related Document, or in any document delivered in connection herewith or therewith that is not qualified by "materiality" or "Material Adverse Effect" shall be incorrect or misleading in any material respect when made or deemed made;

(d) an Event of Insolvency occurs with respect to the Borrower;

(e) a Debt Moratorium, debt restructuring, debt adjustment or comparable restriction is imposed on the repayment, or a repudiation by the Borrower, of the payment, when due and payable of the principal of or interest on any obligation of the Borrower secured by a Lien upon the Collateral; *provided, however,* that the occurrence or continuance of an Event of Non-Appropriation or an Event of Non-Authorization, or both, shall not constitute a Debt Moratorium, a debt restructuring, a debt adjustment or a comparable restriction or a repudiation for purposes of this Section 7.1(f);



(f) (i) any provision of this Agreement or any Related Document to which the Borrower is a party relating to (A) the security for the Obligations; or (B) the Borrower's obligation to pay the Obligations or perform its other material obligations hereunder or thereunder shall cease to be in full force or effect as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction or is declared in a final non-appealable judgment by any court with competent jurisdiction to be null and void, invalid or unenforceable; or (ii) the Borrower or any Person duly authorized to act by or on behalf of the Borrower shall deny, repudiate, contest or disaffirm in writing the validity or enforceability of (A) the Borrower's obligations under this Agreement or the other Related Documents to which the Borrower is a party relating to the security for the Obligations; (B) the Borrower's obligation to pay the Obligations or perform its other material obligations hereunder or thereunder; or (C) the rights and remedies of the Bank under this Agreement and the other Related Documents;

(g) (i) any material provision of the MTC Grant Funding Agreement (including, without limitation, the obligation of MTC to program Apportioned Section 5307 Formula Funds and Apportioned Section 5337 Formula Funds for the payment of the MTC Funding Obligation) at any time for any reason ceases to be valid and binding on MTC as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction or is declared in a final non-appealable judgment by any court with competent jurisdiction to be null and void, invalid or unenforceable; or the validity or enforceability thereof is publicly contested by MTC; (ii) an "event of default" has occurred and is continuing under the MTC Grant Funding Agreement and the applicable grace period for corrective action has expired; or (iii) MTC ceases to be eligible to receive Section 5307 Formula Funds and Section 5337 Formula Funds as a direct recipient;

(h) (i) any material provision of the BART T&R Agreement (including, without limitation, the obligation of BART to comply with federal eligibility requirements) at any time for any reason ceases to be valid and binding on BART as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction or is declared in a final non-appealable judgment by any court with competent jurisdiction to be null and void, invalid or unenforceable; or the validity or enforceability thereof is publicly contested by BART; (ii) an "event of default" has occurred and is continuing under the BART T&R Agreement and the applicable grace period for corrective action has expired; or (iii) BART ceases to be eligible to receive Section 5307 Formula Funds and Section 5337 Formula Funds;

(i) the Bank ceases for any reason to have a first priority Lien over the Collateral;  
or

(j) an Event of Termination has occurred;

*provided, however,* that any of the foregoing events, occurrences, failures, breaches or inaccuracies described in clauses (a), (b), (f), (g) or (h) above that result, and remain in effect, solely and exclusively from the occurrence of an Event of Non-Appropriation, an Event of Non-Authorization or both shall not be considered an Event of Default.

**Section 7.2. Rights and Remedies upon Event of Default.** Upon the occurrence of an Event of Default hereunder:

(a) During the Availability Period, the Bank may by written notice to the Borrower reduce the Available Commitment to zero and thereafter the Bank will have no further obligation to make Loans hereunder; *provided, however*, that, upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States during the Availability Period, the obligation of the Bank to make Loans shall automatically terminate and the Available Commitment shall be reduced to zero without further act of the Bank.

(b) During the Amortization Period only, the Bank may by written notice to the Borrower declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Related Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; *provided, however*, that, upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States during the Amortization Period, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable without further act of the Bank;

(c) Of the type described in Section 7.1(h)(ii) or 7.1(h)(iii), the Bank may in its own name or in the name of Borrower or both seek a writ of mandamus against MTC to compel MTC to perform and carry out its obligations under the MTC Grant Funding Agreement;

(d) Of the type described in Section 7.1(i)(ii) or 7.1(i)(iii), the Bank may in its own name or in the name of Borrower or both, unless MTC is then exercising remedies against BART, seek a writ of mandamus against MTC to compel MTC to cause BART to perform and carry out its obligations under the BART T&R Agreement; and

(e) The Bank may exercise all rights and remedies available to it under the Related Documents or Applicable Law or equity.

**Section 7.3. Suspension of Available Commitment Upon Event of Suspension.** Upon the occurrence and during the continuance of an Event of Suspension, the Available Commitment shall be reduced to zero and the obligation of the Bank to extend Loans under this Agreement shall immediately be suspended, until such time (if any) as such Event of Suspension shall no longer be continuing, whereupon the Available Commitment shall be reinstated in accordance with the terms of this Agreement; *provided, however*, that in the event that such Event of Suspension shall continue until the Commitment Termination Date, the Bank will have no further obligation to make Loans hereunder and the Available Commitment shall permanently terminate.

## **ARTICLE VIII MISCELLANEOUS**

**Section 8.1. Amendments and Waivers.** No amendment or waiver of any provision of this Agreement or any other Related Document, and no consent to any departure by the Borrower therefrom, shall be effective unless in writing signed by the Bank and the Borrower, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

**Section 8.2. Notices; Effectiveness; Electronic Communication.**

(a) *Notices Generally.* Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax transmission or e-mail transmission as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, if to the Borrower or the Bank, to the address, fax number, e-mail address or telephone number specified for such Person as shown below. Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by fax transmission or e-mail transmission shall be deemed to have been given when sent (except that, if not given during normal business hours of the Borrower, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

If to the Borrower: Bay Area Infrastructure Financing Authority  
375 Beale Street, Suite 800  
San Francisco, CA 94105-2066  
Attention: Derek Hansel  
Telephone: (415) 778-6730  
Email: [dhansel@bayareametro.gov](mailto:dhansel@bayareametro.gov)

In addition, for notices pursuant to Section 8.10(b): Clerk of the Board, BAIFA  
375 Beale Street, Suite 800  
San Francisco, CA 94105-2066  
Attention: Clerk  
Telephone: (415) 778-6700

With a copy (which shall not constitute notice) to: Metropolitan Transportation Commission  
375 Beale Street, Suite 800  
San Francisco, CA 94105-2066  
Attention: Kathleen Kane, General Counsel  
Telephone: (415) 778-7975  
Email: [kkane@bayareametro.gov](mailto:kkane@bayareametro.gov)

If to the Bank: Municipal Banking and Markets  
Bank of America, N.A.  
One Bryant Park, 12th Floor  
New York, NY 10036  
Attention: Eunice Onie Lee  
Telephone: (646) 743-1358  
Email: [eunice.lee@bofa.com](mailto:eunice.lee@bofa.com)

With a copy to: Municipal Banking and Markets  
Bank of America, N.A  
100 Federal Street  
Boston, MA 02110  
Attention: Collin De La Bruere  
Telephone: (617) 434-1362  
Email: [collin.delabruere@bofa.com](mailto:collin.delabruere@bofa.com)

(b) *Electronic Communications.*

(i) Notices and other communications to the Bank hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Bank. The Bank or the Borrower may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures provided by it, provided that the approval of such procedures may be limited to particular notices or communications.

(ii) Unless the Bank otherwise prescribes, (A) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (B) notices and other communications posted to an Internet or intranet website shall be deemed received by the intended recipient upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail address or other written acknowledgement) indicating that such notice or communication is available and identifying the website address therefor; *provided, that*, for both clauses (A) and (B), if such notice or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) *Change of Address, Etc.* Each of the Borrower, MTC and the Bank may change its address, fax number or telephone number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

(d) *Reliance by the Bank.* The Bank shall be entitled to, in good faith, rely and act upon any notices (including telephonic or electronic notices) purportedly given by or on behalf of the Borrower even if such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein. All telephonic notices to and other telephonic communications with the Bank may be recorded by the Bank, and the Borrower hereby consents to such recording.

**Section 8.3. No Waiver; Remedies.** No failure on the part of the Bank to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Related Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Related Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

#### **Section 8.4. Expenses; Indemnity; Damage Waiver.**

(a) *Costs and Expenses.* The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Bank (including but not limited to the reasonable fees, charges and disbursements of counsel for the Bank), and shall pay all fees and time charged and disbursements for attorneys who may be employees of the Bank, in each case, in connection with the administration of this Agreement and the other Related Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all out-of-pocket expenses incurred by the Bank (including but not limited to the reasonable fees, charges and disbursements of counsel for the Bank), and shall pay all fees and time charges for attorneys who may be employees of the Bank, in each case, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Related Documents, including its rights under this Section 8.4, or (B) in connection with Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) *Indemnification by the Borrower.* To the extent permitted by Applicable Law, the Borrower shall indemnify the Bank and each Related Party (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and reasonable costs and expenses (including the reasonable fees and expenses of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower) arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Related Document, any Request for Loan, the performance by the parties hereto of their respective obligations hereunder or under any other Related Document or the consummation of the transactions contemplated hereby or thereby, or the administration of this Agreement and the other Related Documents, (ii) any Loan or the use or proposed use of the proceeds therefrom, or (iii) any actual or threatened claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. Without limiting the provisions of Section 3.1(b), this Section 8.4(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) *Waiver of Consequential Damages, Etc.* To the fullest extent permitted by Applicable Law, the Borrower agrees not to assert, and the Borrower hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any Related Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee referred to in clause (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Related Documents or the transactions contemplated hereby or thereby.

(d) *Payments.* All amounts due under this Section 8.4 shall be due and payable within thirty (30) days after receipt of demand therefor, *provided* that, if there are not sufficient funds on deposit in the Collateral Account to satisfy any amounts due under this Section 8.4, the Borrower hereby covenants to request MTC to reprogram, to the extent permitted by law, Apportioned Section 5307 Formula Funds and Apportioned Section 5337 Formula Funds in an amount sufficient to pay all such amounts due under this Section 8.4.

**Section 8.5. Liability of the Bank.** Neither the Bank nor any of its Related Parties shall be liable or responsible for (i) the use which may be made of the proceeds of any Loans, (ii) the validity, sufficiency or genuineness of documents, or of any endorsement(s) thereon (other than the validity as against the Bank of any agreement to which the Bank is a party), even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged, (iii) the lack of validity or enforceability of this Agreement, any other Related Document or any other agreement or instrument relating thereto (other than the validity or enforceability as against the Bank of any agreement to which the Bank is a party), (iv) payment by the Bank against presentation of documents that the Bank in good faith determines to be valid and genuine and that subsequently are found not to comply with the terms of the Agreement, (v) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, facsimile, electronic means or otherwise, whether or not they have been in cipher, including any Requests for Loans, Notices of Continuation and Notices of Conversions, (vi) errors in interpretation of technical terms, (vii) any consequences arising from causes beyond the control of the Bank, including any acts of governmental entities, or (viii) any other circumstances whatsoever in making or failing to make payment under the Available Commitment, this Agreement or pursuant to a Request for Loan; *provided*, that the Borrower shall have claims against the Bank, and the Bank shall be liable to the Borrower to the extent of any direct damages, as opposed to consequential, special, punitive, exemplary or indirect damages, suffered by the Borrower which are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of the Bank. In furtherance and not in limitation of the foregoing, the Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information (other than actual knowledge) to the contrary.

**Section 8.6. Payments Set Aside.** To the extent that any payment by or on behalf of the Borrower is made to the Bank, or the Bank exercises its right of setoff against the Collateral Account, and such payment or the proceeds of such setoff against the Collateral Account or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Bank in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

**Section 8.7. Right of Setoff Against the Collateral Account.** If an Event of Default shall have occurred and be continuing, the Bank is hereby authorized at any time and from time to time, to the fullest extent permitted by Applicable Law to set off and apply any and all deposits on deposit in the Collateral Account against any and all of the Obligations of the Borrower now or

hereafter existing under this Agreement or the Note, irrespective of whether or not the Bank shall have made any demand under this Agreement or the Note. The Bank agrees to notify the Borrower promptly after any such setoff and application, *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

### **Section 8.8. Successors and Assigns; Participations.**

(a) *Successors and Assigns Generally.* The provisions of this Agreement and the Note shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder or under the Note without the prior written consent of the Bank.

(b) *Assignments.* The Bank shall not assign or transfer this Agreement without the prior written consent of the Borrower (which consent shall not be unreasonably withheld, conditioned or delayed); *provided, however,* that such limitation on assignment and transferability of this Agreement shall not prohibit the Bank from transferring the Agreement in whole to (i) upon notice to the Borrower, an Affiliate of the Bank; or (ii) a Person that is not an Affiliate of the Bank during a time where a Default or an Event of Default hereunder has occurred and is continuing; *provided further, however,* that any assignment or transfer of this Agreement pursuant to this Section 8.7(b) shall not be made to a natural Person or the Borrower.

(c) *Participations.* The Bank may at any time, without the consent of, or notice to, the Borrower or any Person, sell participations to any Person (other than a natural Person or the Borrower) (each, a “Participant”) in all or a portion of the Bank’s rights, benefits and/or obligations under this Agreement and the Note (including all or a portion of the Loans); *provided* that (i) the Bank’s obligations under this Agreement shall remain unchanged, (ii) the Bank shall remain solely responsible to the Borrower hereto for the performance of such obligations and (iii) the Borrower shall continue to deal solely and directly with the Bank in connection with the Bank’s rights and obligations under this Agreement and the Note. Any agreement or instrument pursuant to which the Bank sells such a participation shall provide that the Bank shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement. The Borrower agrees that each Participant will, to the extent of its Participation, be entitled to the benefits of this Agreement as if such Participant were the Bank; *provided* that the Borrower’s liability to any Participant (including, without limitation, amounts payable pursuant to Sections 3.1, 3.4, 3.5 and 8.4(b)) will not in any event exceed that liability which the Borrower would have owed to the Bank but for such participation.

(d) *Certain Pledges.* The Bank may at any time pledge or grant a security interest in all or any portion of its rights under this Agreement (including under the Note) to secure obligations of the Bank, including any pledge or grant to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or grant shall release the Bank from any of its obligations hereunder or substitute any such pledgee or grantee for the Bank as a party hereto.

**Section 8.9. Survival of Representations and Warranties.** All representations and warranties made hereunder and in any other Related Document or other document delivered pursuant hereto or thereto in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Bank, regardless of any investigation made by the Bank or on its behalf and notwithstanding that the Bank may have had notice or knowledge of any Default at the time of any borrowing, and

shall continue in full force and effect as long as any Obligation hereunder shall remain unpaid or unsatisfied and until the Maturity Date.

**Section 8.10. Governing Law.**

(a) GOVERNING LAW. THIS AGREEMENT AND THE NOTE AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE NOTES AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK; PROVIDED, HOWEVER, THAT THE OBLIGATIONS OF THE BORROWER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE.

(b) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 8.2; PROVIDED THAT ALL SERVICE OF PROCESS ON THE BORROWER SHALL BE DIRECTED TO ITS CLERK WITH A COPY TO THE GENERAL COUNSEL. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

**Section 8.11. Waiver of Jury Trial.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). Notwithstanding the foregoing sentence, if the foregoing waiver of jury trial is found to be unenforceable in any action or proceeding filed in a court of the State by or against any party hereto in connection with any of the transactions contemplated by this Agreement or any other Related Document, the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 *et seq.* to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision, *provided* that at the option of any party to such proceeding, any such issues pertaining to a “provisional remedy” as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court.

**Section 8.12. Severability.** Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

**Section 8.13. Headings.** Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

**Section 8.14. No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or



other modification hereof or of any other Related Document), the Borrower acknowledges and agrees that: (a) (i) the services regarding this Agreement provided by the Bank and any Affiliate thereof are arm's-length commercial transactions between the Borrower, on the one hand, and the Bank and its Affiliates, on the other hand, (ii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Related Documents; (b) (i) the Bank and its Affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the Borrower or any other Person and (ii) neither the Bank nor any of its Affiliates has any obligation to the Borrower with respect to the transactions contemplated hereby except those obligations set forth herein; and (c) the Bank and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrowers, and neither the Bank nor any of its Affiliates has any obligation to disclose any of such interests to the Borrower.

**Section 8.15. Electronic Execution; Electronic Records; Counterparts.** This Agreement, any Related Document and any other Communication, including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. The Borrower and the Bank agree that any Electronic Signature on or associated with any Communication shall be valid and binding on such Person to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of such Person enforceable against such Person in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Bank may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record ("Electronic Copy"), which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Bank is not under any obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Bank pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Bank has agreed to accept such Electronic Signature, the Bank shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of the Borrower without further verification and regardless of the appearance or form of such Electronic Signature, and (b) upon the request of the Bank, Electronic Signature shall be promptly followed by a manually executed counterpart.

The Bank shall not be responsible for or have any duty to ascertain or inquire into the sufficiency, validity, enforceability, effectiveness or genuineness of any Related Document or any other agreement, instrument or document (including, for the avoidance of doubt, in connection with the Bank's reliance on any Electronic Signature transmitted by telecopy, emailed .pdf or any other electronic means). The Borrower shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Related Document by acting upon, any

Communication (which writing may be a fax, any electronic message, Internet or intranet website posting or other distribution or signed using an Electronic Signature) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated (whether or not such Person in fact meets the requirements set forth in the Related Documents for being the maker thereof).

The Borrower hereby waives (i) any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement or any other Related Document based solely on the lack of paper original copies of this Agreement or such other Related Document, and (ii) waives any claim against the Bank and each Related Party for any liabilities arising solely from the Bank's reliance on or use of Electronic Signatures, including any liabilities arising as a result of the failure of the Borrower to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

**Section 8.16. Patriot Act Notice; OFAC.** The Bank hereby notifies the Borrower that pursuant to the requirements of the Patriot Act it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Bank to identify the Borrower in accordance with the Patriot Act. The Borrower shall, promptly following a request by the Bank, provide all such other documentation and information that the Bank requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act. The Borrower shall (i) ensure that no person who owns a controlling interest in or otherwise controls the Borrower is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the U.S. Department of the Treasury or included in any Executive Orders, that prohibits or limits the Bank from making any advance or extension of credit to the Borrower or from otherwise conducting business with the Borrower and (ii) ensure that the proceeds of the Loans and the Note shall not be used to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto. Further, the Borrower shall comply with all applicable Bank Secrecy Act ("BSA") laws and regulations, as amended.

**Section 8.17. Integration; Effectiveness.** This Agreement and the other Related Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.1, this Agreement shall become effective when it shall have been executed by the Bank and when the Bank shall have received a counterpart hereof of the Borrower.

**Section 8.18. No Third-Party Rights.** Nothing in this Agreement, whether express or implied, shall be construed to give to any Person other than the parties hereto any legal or equitable right, remedy or claim under or in respect of this Agreement, which is intended for the sole and exclusive benefit of the parties hereto.

**Section 8.19. Acknowledgement Regarding Any Supported QFCs.** To the extent that the Related Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, "QFC Credit Support", and each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit

Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Related Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States.

(b) In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Related Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Related Documents were governed by the laws of the United States or a state of the United States.

**Section 8.20 Filing of the Agreement.** In the event the Borrower elects or is required to file a copy of this Agreement or the Note (or any amendment or modification thereof) with Electronic Municipal Market Access as provided by the Municipal Securities Rulemaking Board, the Borrower shall file only a complete copy of this Agreement or the Note containing such redactions as reasonably directed by the Bank.

[Remainder of page intentionally left blank; signature pages follow.]

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Agreement, effective as of the day and year first above written.

BAY AREA INFRASTRUCTURE FINANCING  
AUTHORITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

BANK OF AMERICA, N.A.

By: \_\_\_\_\_

Name: Grace L. Barvin

Title: Senior Vice President

EXHIBIT A

[FORM OF]  
REQUEST FOR LOAN

\_\_\_\_\_, 202\_\_

Municipal Banking and Markets  
Bank of America, N.A.  
One Bryant Park, 12th Floor  
New York, NY 10036  
Attention: Eunice Onie Lee  
Telephone: (646) 743-1358  
Email: Eunice.lee@bofa.com

Ladies and Gentlemen:

Reference is hereby made to the Credit Agreement, dated as of November \_\_, 2023 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), between Bay Area Infrastructure Financing Authority and Bank of America, N.A. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement. This notice constitutes a Request for Loan and the Borrower hereby gives you notice, pursuant to Section 2.02 of the Credit Agreement, that it requests a borrowing under the Credit Agreement (the "Borrowing"), and in connection therewith the Borrower specifies the following information with respect to such Borrowing:

- (1) Aggregate principal amount of the Borrowing:<sup>1</sup> \$ \_\_\_\_\_
- (2) Date of Borrowing (which is a Business Day):<sup>2</sup> \_\_\_\_\_
- (3) Payment is to be made to:<sup>3</sup> \_\_\_\_\_  
\_\_\_\_\_.

In connection with the Borrowing, the Borrower hereby certifies that as of the date of this Request for Loan and as of the date of Borrowing:

- (a) The undersigned is an Authorized Officer of the Borrower.
- (b) The Commitment has not terminated or been suspended;
- (c) To the knowledge of the Borrower, no Event of Insolvency has occurred and is continuing with respect to BART;

<sup>1</sup> Insert an amount not less than \$1,000,000.

<sup>2</sup> Insert a Business Day subsequent to the Business Day on which this Request for Loan is delivered to Lender.

<sup>3</sup> Insert Loan proceeds recipient and payment instructions.

(d) No Default or Event of Default has occurred and is continuing or would result from the making of the Loan contemplated by this Borrowing or from the application of the proceeds thereof;

(e) Each of the representations and warranties of the Borrower set forth in the Related Documents to which it is a party are and remain true and correct in all material respects as of the Borrowing date as if made on the Borrowing date, except for any such representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which representation and warranty is and remains true and correct in all respects as of the Borrowing date as if made on the Borrowing date (except for any representation or warranty that by its terms expressly relates to an earlier date, in which case such representation and warranty is and remains true and correct in all material respects as of such earlier date, except for any such representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which representation and warranty is and remains true and correct in all respects as of said earlier date); and

(f) The amount of the Loan requested does not exceed the Available Commitment.

[Attached hereto as Appendix 1 is the BART requisition provided to the Borrower by MTC and for which the proceeds of the requested Loan are to be applied.]<sup>4</sup>

Very truly yours,  
BAY AREA INFRASTRUCTURE FINANCING  
AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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<sup>4</sup> Insert in all instances other than a Loan to repay an MTC Debt Service Advance.

Appendix 1  
BART Requisition



EXHIBIT B

[FORM OF]

NOTE

\$450,000,000  
San Francisco, California

November \_\_, 2023

The undersigned, BAY AREA INFRASTRUCTURE FINANCING AUTHORITY, a joint exercise of powers agency organized and existing under the laws of the State of California (the “Borrower”), for value received, hereby promises to pay, solely from the funds hereinafter referred to, to BANK OF AMERICA, N.A. (the “Lender”), the principal sum of FOUR HUNDRED FIFTY MILLION DOLLARS (\$450,000,000) or, if less, the aggregate principal amount of all Loans made by the Lender to the Borrower, payable at such times, on such dates and at such location as are specified in the Credit Agreement, dated as of November \_\_, 2023 (as amended, amended and restated, supplemented or modified from time to time, the “Agreement”), between the Borrower and the Lender, together with accrued and unpaid interest thereon. Capitalized terms not otherwise defined herein have the meaning set forth in the Agreement. This note is the “Note” referenced in the Agreement (this “Note”).

The unpaid principal amount hereof from time to time outstanding shall bear interest at the rate or rates and be payable as provided in and calculated in the manner set forth in the Agreement.

Payments of both principal and interest are to be made in lawful money of the United States of America.

This Note evidences indebtedness incurred under, and is subject to the terms and provisions of, the Credit Agreement, to which reference is hereby made for a statement of said terms and provisions, including those terms and provisions under which this Note may be paid prior to its due date and the restrictions on transfer set forth therein.

Upon the occurrence and during the continuance of an Event of Default, this Note shall or may, as provided in the Agreement, and without demand, notice or legal process of any kind, become or be declared immediately due and payable.

The Borrower hereby agrees to pay or cause to be paid all expenses, including reasonable attorneys’ fees and legal expenses, incurred by the holder of this Note in endeavoring to collect any amounts payable hereunder which are not paid when due.

The Borrower hereby waives presentment for payment, demand, protest, notice of protest, notice of dishonor and all other notices and demands whatsoever in connection with the delivery, acceptance, performance and enforcement of this Note.

The obligations of the Borrower under the Agreement and this Note are limited obligations of the Borrower payable solely from the Collateral and the amounts on deposit from time to time

in the Collateral Account. The obligations of the Borrower under the Agreement and this Note are not general obligations of the Borrower and the revenues, funds and assets, real or personal of the Borrower (other than the Collateral and the amounts on deposit from time to time in the Collateral Account) are not pledged for or required for the payment of any amounts due under this Agreement and the Note. The obligations of the Borrower under the Agreement and this Note are not, and shall not be or become, a debt, liability or obligation of the State or any political subdivision of the State (other than the Borrower, to the limited extent set forth herein) or a pledge of the faith and credit of the State or of a political subdivision of the State. The Borrower has no taxing power. The obligations of the Borrower under the Agreement and this Note are subject to continued Authorization, appropriation by the United States Congress of funds for programs authorized under 49 U.S.C. §5307 or 49 U.S.C. §5337 in each Federal Fiscal Year and apportionment by the FTA of such funds so appropriated by the United States Congress in each Federal Fiscal Year.

This Note is made under the laws of the State of California, and for all purposes shall be governed by and construed in accordance with the laws of said State.

*[Remainder of page intentional left blank; signature page follows]*

IN WITNESS WHEREOF, the Credit Group Representative, by its officer thereunto duly authorized, has executed and delivered this Note, effective as of the day and year first above written.

BAY AREA INFRASTRUCTURE FINANCING  
AUTHORITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

SCHEDULE 5.11

CASH FLOWS

[Attach Spreadsheet]