

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 "Indemnatee") against, and hold each Indemnatee 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 Indemnatee), and shall indemnify and hold harmless each Indemnatee from all fees and time charges for attorneys who may be employees of any Indemnatee, incurred by any Indemnatee or asserted against any Indemnatee 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 Indemnatee, 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 Indemnatee. 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 Indemnatee, 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 Indemnatee 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 Indemnatee 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 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 and such payment 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. Reserved.**

**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.