

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.

“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.