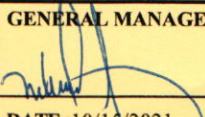

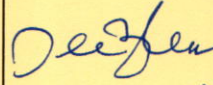

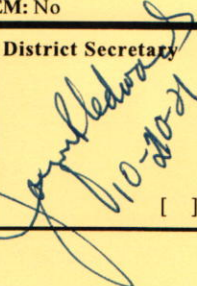
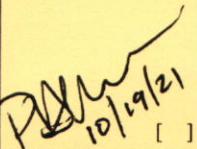




EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:  10/20/21		GENERAL MANAGER ACTION REQ'D:		
DATE: 10/15/2021		BOARD INITIATED ITEM: No		
Originator/Prepared by: Christopher Gan Dept: Assistant Controller Signature/Date:  10/19/2021	General Counsel  10/19/2021 []	Controller/Treasurer  10/19/2021 []	District Secretary  10-20-21 []	BARC  10/19/21 []

Execution and Delivery of a Project Funding Tax And Regulatory Agreement with the Metropolitan Transportation Commission and Authorizing Certain Other Related Matters

PURPOSE:

To request the Board to adopt the resolution authorizing the execution and delivery by BART of the Project Funding Tax and Regulatory Agreement with MTC related to the replacement of BART vehicles from the proceeds of debt to be issued by a joint powers authority and payable from FTA Formula Funds pledged by MTC.

DISCUSSION:

BART, through its Rail Car Replacement Program, has contracted for the acquisition of up to 669 replacement railcars (the "Project"), and previously pursuant to MTC Resolution No. 4123 and MTC Resolution No. 4126, Revised, MTC committed to assist BART in funding the Project and now plans to provide such funding through a joint powers authority financing that pledges FTA Formula Funds as repayment of the issuances.

MTC, consistent with the Letter of No Prejudice with respect to the Project received by MTC from FTA, dated February 14, 2019, proposes to proceed with the financing but requires BART to first approve the execution and delivery of a Project Funding Tax and Regulatory Agreement that requires BART, among other matters, to seek reimbursement for Project expenditures from the financing and to maintain the Project as an Eligible Project for FTA Formula Funds. The terms and documentation for the financing are in the process of being developed by MTC.

FISCAL IMPACT:

Permits the District to receive funds from the proposed MTC financing to fund the Project expenditures in a timely manner. The MTC financing is expected to be paid from FTA Formula Funds programmed by MTC with BART's liability limited to maintaining Project eligibility for FTA funding.

ALTERNATIVES:

Do not adopt this resolution and MTC will not proceed with the financing to provide funding for the Project.

RECOMMENDATION:

Adopt the following Motion.

MOTION:

The Board adopts the resolution that authorizes the delivery and execution of the Project Funding Tax and Regulatory Agreement and related actions.

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

Resolution No. _____

RESOLUTION OF THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT AUTHORIZING THE EXECUTION AND DELIVERY OF A PROJECT FUNDING TAX AND REGULATORY AGREEMENT WITH THE METROPOLITAN TRANSPORTATION COMMISSION AND AUTHORIZING CERTAIN OTHER MATTERS RELATING THERETO.

WHEREAS, the Metropolitan Transportation Commission ("MTC") is the regional transportation planning agency for the nine-counties of the San Francisco Bay Area (the "Bay Area") and the designated metropolitan planning organization for the Bay Area, 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, MTC as the metropolitan planning organization 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, 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 for certain urbanized areas in the Bay Area and MTC receives and apportions, and in turn programs, FTA Formula Funds in accordance with Section 5336 of Chapter 53 of Title 49 of the United States Code to the Bay Area eligible projects included in the TIP ("Eligible Projects"); and

WHEREAS, The San Francisco Bay Area Rapid Transit District ("BART" or the "District"), through its Rail Car Replacement Program, has contracted for the acquisition of up to 669 replacement railcars (the "Project"), which is currently an Eligible Project; and

WHEREAS, as previously expressed in MTC Resolution No. 4123 and MTC Resolution No. 4126, Revised, MTC committed to assist BART in funding the Project and now plans to provide such funding through a joint powers authority financing that pledges FTA Formula Funds as repayment of the issuances; and

WHEREAS, consistent with the Letter of No Prejudice with respect to the Project received by MTC from FTA, dated February 14, 2019 (the "MTC LONP"), MTC proposes to proceed with the financing but requires BART to first approve the execution and delivery of a Project Funding Tax and Regulatory Agreement that requires BART among other matters to seek reimbursement for Project expenditures from the financing and to maintain the Project as an Eligible Project for FTA Formula Funds ;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the San Francisco Bay Area Rapid Transit District as follows:

Section 1. The foregoing recitals are true and correct.

Section 2. The Project Funding Tax and Regulatory Agreement (the "BART/MTC Agreement") in the form presented to this meeting is hereby approved. The General Manager of the District or the Controller/Treasurer of the District are hereby authorized and directed to execute and deliver the BART/MTC Agreement in substantially the form presented to this meeting with such changes, insertions and omissions as may be approved by such officer, such approval being conclusively evidenced by the execution and delivery of the BART/MTC Agreement.

Section 3. The President of the Board of Directors of the District, the General Manager of the District, the Controller/Treasurer of the District, the General Counsel of the District, the District Secretary and any other proper officer of the District, acting singly, is, and each of them hereby is, authorized and directed to execute and deliver any and all documents, certificates and instruments and to do and cause to be done any and all acts and things necessary or convenient to carry out the transactions contemplated by the BART/MTC Agreement and this Resolution, including reviewing and approving financing documents and required disclosure information, submitting requisitions and providing Project information.

Section 4. All actions heretofore taken by the officers, representatives or agents of the District are hereby ratified, confirmed and approved.

Section 5. This Resolution shall take effect from and after its adoption.

PASSED AND ADOPTED on _____, 2021 by the following vote:

AYES:

NOES:

ABSENT:

President

ATTEST:

District Secretary

**PROJECT FUNDING
TAX AND REGULATORY AGREEMENT**

Dated as of [November 1, 2021]

By and Between

METROPOLITAN TRANSPORTATION COMMISSION,

And

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

TABLE OF CONTENTS

	Page
SECTION 1. DEFINITIONS; CONSTRUCTION.....	2
SECTION 2. PURPOSE; PROGRAMMED GRANT RECEIPTS; BAIFA OBLIGATIONS.....	6
SECTION 3. BAIFA OBLIGATION PROCEEDS; DISBURSEMENT.....	6
SECTION 4. BART RIGHTS AND OBLIGATIONS.....	7
SECTION 5. REPRESENTATIONS, WARRANTIES AND COVENANTS OF BART.....	8
SECTION 6. OBLIGATIONS OF MTC.....	10
SECTION 7. DEFAULT AND REMEDIES.....	10
SECTION 8. GENERAL PROVISIONS.....	11
EXHIBIT A PROJECT DESCRIPTION.....	A-1
EXHIBIT B FORM OF WRITTEN REQUISITION OF BART	B-1
EXHIBIT C FORM OF PROJECT DISCLOSURE.....	C-1

PROJECT FUNDING TAX AND REGULATORY AGREEMENT

This **Project Funding Tax and Regulatory Agreement** dated as of [November 1, 2021] (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 Government Code ("Government Code") of the State of California (the "State"); and

MTC is the designated metropolitan planning organization for the Bay Area Region, 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, MTC as the metropolitan planning organization 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 ("UZAs") in the Bay Area Region, which include the Antioch, Concord and San Francisco-Oakland urbanized areas ("Bay Area UZAs"); and

Pursuant to Section 5302 of Chapter 53 of Title 49 of the United States Code, MTC receives and apportions, and in turn programs, FTA Formula Funds in accordance with Section 5336 of Chapter 53 of Title 49 of the United States Code to the Bay Area UZAs for eligible projects included in the TIP ("Eligible Projects"); 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 Master Regional Transit Funding Agreement, dated as of [November 1, 2021] the ("RTF Master Agreement"), by and between MTC and BAIFA, and consistent with the Letter of No Prejudice with respect to the Project (defined herein) received by MTC from FTA, dated February 14, 2019 (the "MTC LONP"), 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 [November 1, 2021], 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 of MTC designated to act on behalf 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 of BAIFA designated to act on behalf 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 RTF Master Indenture.

BAIFA Disbursements means amounts paid by BAIFA to BART, for costs of the Project paid or to be paid by BART, subject to the terms of this Agreement, the RTF Master Agreement, the RTF Master Indenture and the MTC LONP.

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 issued or incurred from time to time by BAIFA, and payable from Programmed Grant Receipts received by the Trustee, for the purpose of providing proceeds to fund or refund BAIFA Disbursements to the Project or other BAIFA Obligations or to pay MTC for an MTC Project Disbursement, in each case pursuant to the terms of the RTF Master Agreement and the RTF Master Indenture and the MTC LONP, 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 RTF Master Indenture.

BART means the San Francisco Bay Area Rapid Transit District.

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.

Bay Area UZAs means the UZAs of Antioch, Concord, and San Francisco-Oakland.

Bond Year has the meaning set forth in the RTF Master Indenture.

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 the last date of signature below of MTC or BART.

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 Federal Transit Administration.

FTA Formula Funds means funds apportioned to Bay Area UZAs by FTA pursuant to the formula set forth in Section 5336, Section 5337 or Section 5339, as applicable, of Chapter 53 of Title 49 of the United States Code, that are programmed by MTC to eligible projects, including the Project, including, (i) Section 5307 Urbanized Area Formula Funding Program funds; (ii) Section 5337 State of Good Repair Program funds; and (iii) any other 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.

MTC means the Metropolitan Transportation Commission.

MTC Debt Service Advance means amounts transferred by MTC, in its sole discretion, to BAIFA or the Trustee 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 the Trustee, and for which MTC shall be eligible under the terms of the MTC LONP to subsequently Program, and be reimbursed from, FTA Formula Funds.

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 Bond Year, plus (ii) the amount of all other obligations coming due and payable under the RTF Master Indenture at any time in each such Bond Year and, in each case, not paid from other lawfully available sources in such Bond Year.

MTC LONP means the Amended Letter of No Prejudice with respect to the Project received by MTC from FTA, dated February 14, 2019, 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 RTF Master Agreement.

MTC Project Disbursements means amounts paid by MTC to BAIFA for payment to BART for expenditures on costs of the Project, from funds that are lawfully available to MTC, other than FTA Formula Funds or proceeds of BAIFA Obligations; provided that MTC shall be eligible under the terms of the MTC LONP to be subsequently reimbursed for such disbursements from Programmed Grant Receipts or proceeds of BAIFA Obligations.

Parties means MTC and BART.

Program or Programming means, in each Bond Year, MTC staff 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; [and] (iii) prepare and submit the necessary grant application to FTA for FTA Formula Funds; and (iv) provide for the timely wire transfer of the Programmed Grant Receipts to the Trustee.].

Programmed Grant Receipts means that portion of the FTA Formula Funds Programmed by MTC to pay MTC Funding Obligations pursuant to the RTF Master Agreement, subject to the MTC LONP.

Project means the acquisition 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.

RTF Master Agreement means the Master Regional Transit Funding Agreement, dated as of [November 1, 2021], by and between MTC and BAIFA, as it may be amended from time to time.

RTF Master Indenture means the Regional Transit Funding Master Indenture of Trust, dated as of [November 1, 2021], by and between BAIFA and the Trustee, and any supplements and amendments thereto, executed and delivered by BAIFA and the Trustee from time to time establishing the terms and conditions for the issuance, sale, execution, delivery, security, payment and administration of the BAIFA Obligations.

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.

Trustee means [_____], as trustee under the RTF Master Indenture.

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 Master 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 RTF Master Indenture, 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 Master Agreement shall be secured by and payable from the Programmed Grant Receipts and shall be subject to the terms and conditions of the RTF Master Agreement and the RTF Master Indenture.

(c) Programmed Grant Receipts. Pursuant to the RTF Master 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, MTC shall deliver a requisition to the Trustee in accordance with the terms of the RTF Master Indenture and the Trustee shall cause BAIFA Disbursements to be disbursed by the Trustee in the requested amount 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. Each Bond Year 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 such Bond Year 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 Master Agreement. MTC shall keep appropriate records as required by the FTA of the MTC Funding Obligations and the Programing 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 RTF Master Indenture.

(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 the agreement did not contain the particular term or provision held to be invalid.

(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 Trustee 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 Trustee, 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 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 only 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. Notices may also be provided by email provided the recipient confirms receipt by return email.

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
[add email]

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

(i) Waivers. 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. 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 the provisions of the Code applicable to obligations bearing interest that is excludable from gross income. 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, or the payment of debt service on the BAIFA Obligations, the Parties agree to cooperate to implement any amendments to this Agreement that are necessary and desirable.

(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.

[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 _____

By _____

Date _____

Date _____

**ACKNOWLEDGED BY BAY AREA
INFRASTRUCTURE FINANCING
AUTHORITY**

By _____

[_____] , Chair

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.

EXHIBIT B

FORM OF WRITTEN REQUISITION OF BART

EXHIBIT B-1

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

For project: (Attach progress reports on a quarterly basis) (provide description of project)		Period Covered by this Invoice: (indicate months)					
Expenses:	Prior Life		Quarter			Life to	
	Rate	To Date*	(Month)	(Month)	(Month)	Subtotal	Date Costs** Budget
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)							-
Total amount due:							
Notes:							
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 [August, 2021], 296 cars are on site on BART's property, with 286 having received final approval to enter revenue service.] According to information provided by BART, the total cost of the BART 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 BART Project, approximately \$866 million is funded by BART funds, Santa Clara Valley Transportation Authority funds, and other state grants.