

Date: October 25, 2023
W.I.: 6880
Referred by: BAIFA

ABSTRACT
BAIFA Resolution No. 50

This resolution authorizes the execution of certain documents by BAIFA in connection with BAIFA's financing of the BART Rail Car Replacement Program, and all necessary actions in connection therewith.

Discussion of this action is contained in the Executive Director's accompanying Memorandum, dated October 25, 2023.

Date: October 25, 2023
W.I.: 6880
Referred by: BAIFA

Re: BAIFA's financing of the BART Rail Car Replacement Program

BAY AREA INFRASTRUCTURE FINANCING AUTHORITY
RESOLUTION NO. 50

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

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

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

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

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

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

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

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

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

WHEREAS, the Commission has requested assistance from the Bay Area Infrastructure Financing Authority (the “Authority”), a public entity duly established and organized under the laws of the State of California, which was created pursuant to a joint exercise of powers agreement (the “Joint Powers Agreement”) entered into by the Commission and the Bay Area Toll Authority, to support the Commission’s regional transportation planning process by facilitating the financing and refinancing of a portion of the costs of the BART Project by providing funds to BART, including, as applicable, from the proceeds of a note to be issued pursuant to a resolution of the Authority (this “Authority Resolution”) and a credit agreement (“Credit Agreement”) between the Authority and Bank of America, N.A. (the “Bank”; the note to be issued pursuant to this Authority

Resolution and the advances made under the Credit Agreement are hereinafter collectively referred to as the “BAIFA Obligations”), and payable by the Authority from a portion of certain FTA Formula Funds it receives from the Commission pursuant to a Regional Transit Project Funding Agreement (the “RTPFA”) between the Commission and the Authority; and

WHEREAS, there has been prepared and presented to the Authority the proposed form of Credit Agreement; and

WHEREAS, as previously expressed in Authority Resolution No. 19, the Authority desires and intends to assist the Commission and BART by providing financing and refinancing in the form of BAIFA Obligations to be used by BART for the BART Project; and

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

WHEREAS, in compliance with California Government Code Section 5852.1, the Authority has obtained from its financial advisor good faith estimates with respect to the BAIFA Obligations which are attached as part of the staff report provided in connection with this Resolution and available to the public at this meeting; now therefore be it

RESOLVED, that the Bay Area Infrastructure Financing Authority (the “Authority”) hereby finds and determines that the foregoing recitals are true and correct; and be it further

RESOLVED, the Authority approves the form of the Credit Agreement; and be it further

RESOLVED, that the Authority hereby authorizes the issuance, sale, execution and delivery from time-to-time, of BAIFA Obligations in accordance with the terms hereof and the Credit Agreement and Section 6500, *et. seq.*, of the California Government Code, including, but not limited to, Government Code Section 6591, as applicable, and such BAIFA Obligations shall:

- (A) bear their date of issuance,
 - (B) bear the time of maturity, which shall not exceed fifty (50) years from their date of issuance,
 - (C) bear either taxable or tax-exempt fixed interest rates or variable interest rates, including interest rates that change over the life of such BAIFA Obligations, and if variable, not in excess of the maximum rate of interest specified in the Credit Agreement,
 - (D) be payable as to principal and interest at the time or times provided,
 - (E) be in the denominations and the form provided,
 - (F) carry the registration privileges, if any, provided,
 - (G) be executed in the manner provided,
 - (H) be payable in lawful money of the United States at the place or places provided within or without the State,
 - (I) be subject to the terms of prepayment, and
 - (J) be secured,
- all as set forth in the Credit Agreement;

provided, however, that

- (1) the aggregate principal amount of BAIFA Obligations issued pursuant to the foregoing approval shall not exceed four hundred fifty million dollars (\$450,000,000), and
- (2) the BAIFA Obligations, which are payable by the Authority from certain FTA Formula Funds it receives from the Commission as programmed by the Commission to pay “MTC Funding Obligations” pursuant to the RTPFA and authorized hereby, shall not be

issued after December 7, 2029 without further authorization by the Commission; and be it further

RESOLVED, that the Authority hereby authorizes and delegates authority to each Authorized Officer (as defined in the Credit Agreement) to execute the Credit Agreement and the RTPFA in substantially the same forms presented to the Authority, with such additions thereto or changes therein as any Authorized Officer, with the advice of General Counsel to the Authority and bond counsel and tax counsel to the Authority, may require or approve (the approval of such additions or changes to be conclusively evidenced by the execution and delivery of the Credit Agreement and the RTPFA); and be it further

RESOLVED, that the Chair of the Authority, the Vice Chair of the Authority, the Executive Director, the Chief Financial Officer and other appropriate officers of the Authority, be and they are hereby authorized and directed, jointly and severally, for and in the name and on behalf of the Authority, to execute and deliver each of the documents that is necessary or appropriate to effect each of the transactions contemplated hereby, including, without limitation, any and all certificates (including, but not limited to a tax certificate certifying to certain matters as required by the Internal Revenue Code), documents, amendments, instructions, orders, representations and requests and to do any and all things and take any and all actions that may be necessary or advisable, in their discretion, to effectuate the actions that the Authority has approved in this Resolution and to carry out, consummate and perform the duties of the Authority set forth in the Credit Agreement, the RTPFA and all other documents executed in connection with BAIFA Obligations and the BART Project; and be it further

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

BAY AREA INFRASTRUCTURE FINANCING
AUTHORITY

Alfredo Pedroza, Chair

The above resolution was entered into by the Bay Area Infrastructure Financing Authority at a regular meeting of the Authority held in San Francisco, CA and at other remote locations, on October 25, 2023.