

**Metropolitan Transportation Commission
Programming and Allocations Committee**

November 12, 2008

Item Number 3a

Resolution No. 3874

- Subject:** MTC Memorandum of Understanding (MOU) with the Golden Gate Bridge, Highway and Transportation District (GGBHTD) and the San Francisco County Transportation Authority (SFCTA) for the construction project to replace Doyle Drive.
- Background:** The reconstruction of Doyle Drive is a \$1.045 billion project. Staff will present a draft MOU under which MTC would enter into a funding agreement with GGBHTD and SFCTA. MTC's commitment of \$80 million would allow the Project to secure a fully-funded status.
- Issues:**
- 1) Although Doyle Drive is not located in a State-owned toll bridge corridor, staff has determined that it is nonetheless eligible for AB 1171 funds (Streets and Highways Code Sections 30913 and 31010 (b)) because of the significant adverse impact on traffic congestion levels on the State-owned toll bridges if Doyle Drive were to collapse and be out of service for an extended period of time.
 - 2) Like the additional AB 1171 funds committed in the Resolution 3434 Strategic plan approved in September 2008, the availability of AB 1171 funds for this agreement is dependent on a new financial management strategy for the MTC bridge toll transfers. In brief terms, the new strategy would make more funding available up front as compared to the current practice of annual transfers from BATA to MTC. We expect to present more details on the new strategy to the Commission in the coming months.
- Recommendation:** Staff recommends that the Committee refer to the Commission authorization for the Executive Director to enter into a memorandum of understanding with GGBHTD and SFCTA that commits \$80 million from MTC to the reconstruction of Doyle Drive. Staff recommends the Committee refer MTC Resolution No. 3874 to the Commission for approval.
- Attachments:** Executive Director's Memorandum
Memorandum of Understanding (Draft)
MTC Resolution No. 3874



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COMMISSION

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Memorandum

TO: Programming and Allocations Committee

DATE: November 5, 2008

FR: Executive Director

RE: Resolution 3874 – Memorandum of Understanding Between the Metropolitan Transportation Commission, Golden Gate Bridge and Highway Transportation District, and San Francisco County Transportation Authority

Summary:

The Deputy Executive Director, BATA will present a memorandum of understanding between MTC, the Golden Gate Bridge, Highway and Transportation District (GGBHTD) and the San Francisco County Transportation Authority (SFCTA) that would commit MTC to allocating \$80 million to the SFCTA for the construction project that replaces Doyle Drive in San Francisco.

Background:

The purpose of the Doyle Drive construction project (“the project”) is to improve the seismic, structural, and traffic safety of Doyle Drive within the setting and context of the Presidio of San Francisco and its purpose as a National Park. Doyle Drive is approaching the end of its useful life after over seventy years of operation. Permanent improvements are needed to bring Doyle Drive up to current design and safety standards. The table on page 2 summarizes the need for the Project.

The Project replaces three of the Bay Area’s 11 most structurally deficient bridges, including the Presidio and Marina Viaducts, and Ruckman Avenue Undercrossing (the Presidio Viaduct currently has a Federal Sufficiency Rating of 2 out of 100, 0 being completely deficient). The Project is in the design phase; construction is estimated to commence in 2010 and be completed by 2014. The SFCTA’s estimate for the Project is \$1.045 billion; MTC’s and GGBHTD’s contributions of \$80 million each would secure a fully-funded status (see attached fund source Chart).

Element	Deficiency	Result
Structural Degradation	<ul style="list-style-type: none"> • Age of the facility • The effects of heavy traffic • Exposure to air 	Seismically and structurally unsafe
Location	Eastern portion is located in an identified liquefaction ¹ zone	Structural failure during an earthquake
Design	1937 original design does not meet today's safety standards	Today's vehicle fleet combined with traffic volumes contributes to driving patterns not anticipated when Doyle Drive was designed
Access	Lack of direct vehicular access into the Presidio	Limited access to facilities within the Presidio

¹Liquefaction is the process which by a solid behaves as a liquid. This is often the case with some soils, resulting in landslides. Liquefaction can also happen during an earthquake in certain filled areas.

Basis of an Agreement:

Recognizing that the loss of Doyle Drive would have direct operational and financial effects on the State-owned and Golden Gate bridges, MTC and GGBHTD have resolved to contribute funds to secure completion of the Project's funding. The agreement will be memorialized in the attached three-party Agreement amongst the three agencies. The basic tenets of the new arrangement are as follows:

- MTC and GGBHTD will each contribute \$80 million to the Project, an amount that represents the maximum contribution to be made by each agency irrespective of future changes in the estimate, receipt of construction bids in excess of the estimate, or change orders. SFCTA shall remain solely responsible for financing all other costs of the Project. By making these limited financial contributions, neither MTC nor GGBHTD is agreeing to assume ownership or control over the Project in any form. SFCTA shall provide MTC and GGBHTD with regular cost reports and project updates, and agrees to maintain close coordination and interaction with MTC and GGBHTD.
- \$5 million of the GGBHTD contribution is contingent on receipt of an equal amount of funding from Marin and Sonoma County Transportation Authorities.
- The MOU becomes effective upon the approval by all the governing boards of the parties and execution by their respective duly authorized representatives, but shall be terminated automatically if a principal construction contract for the Project is not awarded and executed by January 1, 2012. Payment shall be made to SFCTA no later than the final year of construction of the Project.

Although Doyle Drive is not located in a State-owned toll bridge corridor, staff has determined that it is nonetheless eligible for AB 1171 funds (Streets and Highways Code Sections 30913 and 31010 (b)) because of the significant adverse impact on traffic congestion levels on the State-owned toll bridges if Doyle Drive were to collapse and be out of service for an extended period of time.

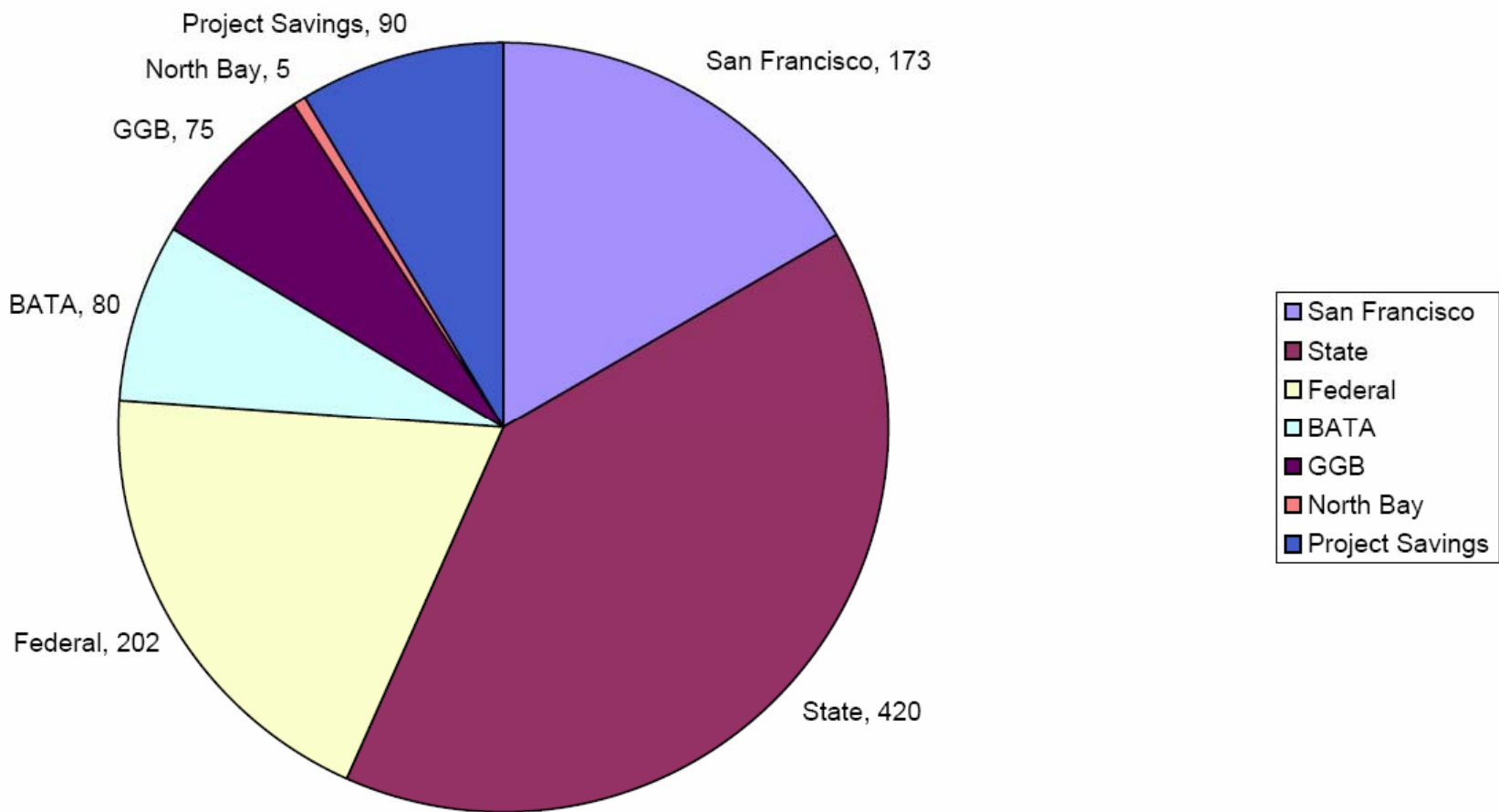
Recommendation:

Staff recommends that the Committee refer to the Commission authorization for the Executive Director to enter into a memorandum of understanding with GGBHTD and SFCTA that commits \$80 million from MTC to the Doyle Drive project, substantially in the form set forth in Attachment A of Resolution No. 3874. Any non-substantive changes to Attachment A are subject to the review and approval as to form by MTC's Office of General Counsel. Staff recommends the Committee refer MTC Resolution No. 3874 to the Commission for approval.

Steve Heminger

Attachments: Attachment 1 - Figures 1 and 2
Attachment 2 - Fund Source Chart
Attachment 3 – Draft MOU

Doyle Funding Solution by Source (in \$ Millions)
Total Project Cost Estimate \$1.045 Billion



**Memorandum of Understanding
Amongst the Golden Gate Bridge, Highway and Transportation District,
the Metropolitan Transportation Commission and the
San Francisco Transportation Authority
Pertaining to the Funding of the Doyle Drive Reconstruction Project**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into as of this ____ day of _____, 2008, by and among the Golden Gate Bridge, Highway and Transportation District ("Bridge District"), established pursuant to Streets and Highways Code Section 27000 *et seq.*, the Metropolitan Transportation Commission ("MTC"), established pursuant to Government Code Section 66500 *et seq.*, and the San Francisco County Transportation Authority ("SFCTA"), established pursuant to a ballot measure approved by the voters in the City and County of San Francisco, and collectively referred to herein as "the parties".

RECITALS

WHEREAS, the parties to this MOU are public agencies created by the laws of the State of California, and each party is empowered and has been duly authorized to enter into this MOU;

WHEREAS, Doyle Drive is a state highway owned and operated by the State of California Department of Transportation ("Caltrans");

WHEREAS, Doyle Drive is a 70 year old structure in need of seismic reconstruction at the earliest practicable date;

WHEREAS, although Doyle Drive is owned and operated by Caltrans, the SFCTA has assumed the role of lead agency for the Doyle Drive Reconstruction Project, and is responsible for securing, among other responsibilities, all necessary funding, permits, property rights, regulatory approvals, and environmental approvals, to rebuild this 70 year old seismically deficient structure;

WHEREAS, the State of California has committed to fund the Doyle Drive Reconstruction Project, (as more fully described in the Environmental Impact Statement/Report and Section (4) Evaluation for the South Access to the Golden Gate Bridge in the City and County of San Francisco on Route 101, Doyle Drive and Richardson Avenue from Lombard Avenue to the Golden Gate Bridge Toll Plaza, and on Route 1, from the Ruckman Undercrossing to the Route

101 Junction, prepared by SFCTA, the Federal Highway Administration, and Caltrans) in the amount of \$405 million from the State Highway Operations and Protection Program;

WHEREAS, a substantial shortfall in funding remains for the Doyle Drive Reconstruction Project;

WHEREAS, in recognition of the vital importance of a seismically upgraded Doyle Drive to users of the Golden Gate Bridge, as well as to the economy and vitality of the overall Bay Area region, the Bridge District and MTC have agreed to make a capped financial contribution toward the cost of reconstruction of Doyle Drive in accordance with the terms and conditions set forth below; and

WHEREAS, the parties desire to memorialize their understandings with respect to the funding of the Doyle Drive Reconstruction Project so as to enable the project to proceed.

NOW, THEREFORE, the parties to this MOU agree as follows:

1. Financial Contribution. In recognition of the vital importance of a seismically upgraded Doyle Drive to users of the Golden Gate Bridge, as well as to the overall Bay Area region, MTC and the Bridge District will each contribute the following amounts for construction work to the agency administering the Doyle Drive Reconstruction Project:

MTC:	\$80 million
Bridge District:	\$75 million

The Bridge District's contribution of \$75 million will be increased to the total amount of \$80 million by means of contributions to other Bridge District projects from the Transportation Authority of Marin and the Sonoma County Transportation Authority, representing Marin and Sonoma County residents, which are the subject of separate agreements. This indirect contribution of \$5 million by Marin and Sonoma Counties constitutes their maximum total contribution to the Doyle Drive project. If the Marin County or Sonoma County contributions are not authorized by their respective policy boards, the total contribution by the Bridge District will be reduced by the

amount not forthcoming from one or both of these two counties but at no time will the contribution amount decrease below \$75 million.

Said amounts represent the maximum total contribution to be made by Bridge District and MTC for the Doyle Drive Reconstruction Project, irrespective of any future modifications of the current cost estimate, the receipt of construction bids in excess of that estimate, or change orders. By making these limited financial contributions, neither the Bridge District nor MTC is agreeing to assume ownership or control over Doyle Drive or any aspect of the design, construction, maintenance or liability risks and responsibilities associated therewith. As between SFCTA, MTC and the Bridge District, SFCTA shall be solely responsible for financing all other costs of the Doyle Drive Reconstruction Project and for the assumption of all liability risks associated with or arising out of the Project.

2. Prohibition on Tolling Other than funding of the Bridge District's one-time contribution amount specified in Section 1, there will be no tolling of any kind on the Golden Gate Bridge or on Doyle Drive to fund the Doyle Drive Reconstruction Project, except as provided in Section 3 below.

3. Regional Cordon Tolling Program. A regional cordon tolling program for the purposes of congestion management that tolls the Doyle Drive entrance to San Francisco in a similar manner and time frame as all other entrances to San Francisco are tolled may be permitted. Funds collected pursuant to a regional cordon tolling program may be expended on the Doyle Drive Reconstruction Project.

4. Manner of Payment. The financial contribution specified in Section 1 shall be paid by the Bridge District and MTC to SFCTA no later than the final year of construction of the Doyle Drive Reconstruction project. The staffs of the Bridge District and MTC shall establish the administrative procedures for the invoicing and distribution of the funds consistent with the project's construction schedule.

5. Reimbursement of Financial Contribution. If, notwithstanding the prohibition that no toll of any kind is to be exacted from users of the Golden Gate Bridge or Doyle Drive expressly for the reconstruction of Doyle Drive except as permitted under Section 3, an act of the State Legislature authorizes and leads to the imposition of such a toll for such a purpose, all amounts contributed by the Bridge District and MTC shall be reimbursed to the respective agencies, plus interest for their respective contributions, and the Bridge District and MTC shall not be required to

make any remaining payments. Interest shall be calculated at a blend of the average annual rate of return on the Bridge District's and MTC's investments. Any such repayment must occur within thirty six months following the imposition of such a toll.

6. Effective Date. This MOU shall become effective upon the approval by all of the governing boards of the parties and execution by their respective duly authorized representatives. Unless otherwise extended by amendment of the parties pursuant to paragraph 8 below, this MOU shall be terminated automatically if a principal construction contract for the Doyle Drive Reconstruction Project is not awarded and executed by January 1, 2014.

7. Notices. Any notice which any party wishes to give to another party under this MOU shall be in writing, delivered personally to the representative of the parties identified below, or by deposit in the United States Mail, first class postage prepaid, address as follows:

To Bridge District: General Manager
 Golden Gate Bridge, Highway
 and Transportation District
 P.O. Box 9000, Presidio Station
 San Francisco, CA 94129-0601

To MTC: Executive Director
 Metropolitan Transportation Commission
 Joseph P. Bort Metro Center
 101 Eighth Street
 Oakland, CA 94607-4700

To SFCTA: Executive Director
 San Francisco County Transportation Authority
 100 Van Ness Avenue, 26th Floor
 San Francisco, CA 94102

Notices sent by mail shall be deemed to be delivered five (5) days after the date they are deposited in the U.S. Mail. A party may change the address to which notices are to be sent only by giving notice to the other parties as provided in this section.

8. Miscellaneous

a. This MOU may be amended or modified only in writing approved by a vote of the governing boards of each of the parties.

b. All recitals are incorporated herein by reference and shall be deemed part of this MOU for all purposes.

c. This MOU shall be construed reasonably, in accordance with its terms. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this MOU.

d. No party may assign or delegate any of its rights or obligations under this MOU without the prior written consent of all other parties to this MOU. This MOU shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

e. If any provision of this MOU is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way.

f. The waiver of any breach of this MOU shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or another provision of this MOU. Any waiver must be in writing, signed by an authorized representative of the waiving party.

g. Nothing in this MOU, whether expressed or implied is intended to confer any rights or remedies on any persons other than the parties to it, nor is anything in this MOU intended to relieve or discharge the obligation or liability of any third persons to any party to this MOU.

h. If any legal proceeding shall be instituted by any of the parties hereto to enforce the terms of this MOU or to determine their respective rights or obligations under this MOU, the prevailing party in said proceeding shall recover, in addition to all court costs, reasonably attorney's fees.

i. This MOU constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior or contemporaneous oral or written agreements, representations, statements, documents or understandings of the parties.

9. Maintenance, Audit and Inspection of Records. SFCTA shall permit authorized representatives of MTC and the Bridge District to inspect, audit and make copies of any and all data or records of SFCTA relating to the Doyle Drive Reconstruction Project. SFCTA shall maintain all such records for a period of four (4) years from the date of completion of the Doyle Drive Reconstruction Project as evidenced by the filing of a Notice of Completion.

10. Cost Reports. SFCTA will provide MTC and the Bridge District with regular cost reports showing expenditures for the Doyle Drive Reconstruction Project. Additionally, SFCTA agrees to maintain close coordination and interaction with the Bridge District and MTC to minimize interference with the Bridge District operations or administration of its responsibilities to maintain the Golden Gate Bridge.

11. Dispute Resolution. If a question arises regarding interpretation of this MOU or its performance or the alleged failure of a party to perform, the party raising the question or making the allegation shall give written notice thereof to the other parties. The parties shall promptly meet in an effort to resolve the issues raised. If the parties fail to resolve the issues raised, alternative forms of dispute resolution, including but not limited to mediation may be pursued by mutual agreement at equally shared costs. It is the intent of the parties, to the extent possible, that litigation be avoided as a means of dispute resolution.

12. Jurisdiction. This MOU and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of California.

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

GOLDEN GATE BRIDGE, HIGHWAY AND TRANSPORTATION DISTRICT

By: _____
President, Board of Directors

By: _____

Attest:

District Secretary

Approved as to form:

Attorney for the District

METROPOLITAN TRANSPORTATION COMMISSION

By: _____
Chair

By: _____

Attest:

Secretary

Approved as to form:

Attorney

SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY

By: _____
Chair

By: _____

Attest:

Secretary

Approved as to form:

Attorney

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Date: November 26, 2008
W.I.: 1251, 1252, 1253, 1254, 1255
Referred by: PAC

ABSTRACT

MTC Resolution No. 3874

This resolution authorizes the Executive Director or his designee to enter into a Memorandum of Understanding between MTC, the Golden Gate Bridge Highway and Transportation District (GGBHTD) and the San Francisco Transportation Authority (SFCTA) to fund the Doyle Drive project.

Discussion of this item can be found in the Executive Director memorandum to the Programming and Allocations Committee dated November 5, 2008.

Date: November 26, 2008
W.I.: 1251, 1252, 1253, 1254, 1255
Referred by: PAC

METROPOLITAN TRANSPORTATION COMMISSION
RESOLUTION NO. 3874

WHEREAS, pursuant to California Government Code Section 66500 et seq., the Metropolitan Transportation Commission (MTC) is the regional transportation planning agency for the San Francisco Bay Area; and

WHEREAS, MTC is the designated metropolitan planning organization (MPO) for the nine-county San Francisco Bay Area; and

WHEREAS, Pursuant to Streets and Highways Code sections 30913 and 31010(b), the Bay Area Toll Authority (BATA) makes fund transfers for MTC-approved transportation projects; and

WHEREAS, findings by MTC are necessary to make funding available for the Doyle Drive project described below under Streets and Highways Code sections 30913 and 31010(b); and

WHEREAS, the California Department of Transportation (Caltrans) has completed a Final Environmental Impact Statement/Report for the South Access to the Golden Gate Bridge Construction Project (“Doyle Drive project”) located in the City and County of San Francisco to improve seismic, structural, and traffic safety; and

WHEREAS, MTC, the Golden Gate Bridge Highway and Transportation District (GGBHTD), and the San Francisco Transportation Authority (SFCTA) have developed a funding plan for the Doyle Drive project, which includes a commitment of \$80 million in funds to be provided by MTC for the Doyle Drive project, and have developed and desire to enter into a Memorandum of Understanding (MOU) with MTC that defines the funding plan and establishes project management structures for the Doyle Drive Project.

WHEREAS, MTC has determined that \$80 million in funds under Streets and Highways Code sections 30913 and 31010(b) are available to fund the Doyle Drive project; and

WHEREAS, the MTC Programming and Allocations Committee met on November 12, 2008 to review the proposed MOU between MTC, the GGBHTD, and the SFCTA for the Doyle Drive project; now, therefore, be it

RESOLVED, that the Doyle Drive project is an eligible project for funding under Streets and Highways Sections 30913 and 31010(b) because it is designed to reduce vehicular traffic congestion and improve bridge operations on the Bay Bridge, the Richmond Bridge, and the Carquinez Bridge because those bridges would suffer dramatic increases in traffic congestion and reduced operational efficiency if Doyle Drive became unusable in a seismic event; and, be it further

RESOLVED, that the Doyle Drive project is also a transit project because public transportation busses and vans and their passengers are dependent upon the use of Doyle Drive; and, be it further

RESOLVED, that MTC authorizes the Executive Director or his designee to enter into a MOU between MTC, the GGBHTD, and the SFCTA for the Doyle Drive project as set forth in Attachment A to this resolution attached hereto and incorporated herein as though set forth at length and to enter into such other contracts and agreements and to take such further actions under Streets and Highways Code sections 30913 and 30914 as the Executive Director deems necessary or appropriate to implement the MOU; and, be it further

RESOLVED, that any non-substantive changes to Attachment A shall be reviewed and approved as to form by MTC's Office of General Counsel.

METROPOLITAN TRANSPORTATION COMMISSION

Bill Dodd, Chair

The above resolution was entered into by the Metropolitan Transportation Commission at a regular meeting of the Commission held in Oakland, California, on November 26, 2008.

Date: November 26, 2008
W.I.: 1251, 1252, 1253, 1254, 1255
Referred by: PAC

Attachment A
MTC Resolution No. 3874

Memorandum of Understanding between MTC, the Golden Gate Bridge, Highway and
Transportation District, and the San Francisco Transportation Authority
for the Doyle Drive Project.