

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Staff

DATE: **February 19, 2002**

RE: **Analysis Report**

Balances As Of:	<u>2/13/02</u>	<u>2/14/01</u>
<u>GSD 4% RESERVE FUND</u>	\$7,924,185	\$7,286,761
 <u>CONTINGENCY ACCOUNTS</u>		
GSD	\$35,000	\$50,000
USD	\$50,000	\$50,000
 <u>GENERAL FUND</u>		
GSD	\$63,997,770	\$46,859,389
USD	\$16,682,399	\$11,156,918
 <u>GENERAL PURPOSE</u>		
<u>SCHOOL FUND</u>	\$10,404,340	\$22,665,532
 <u>SOLID WASTE</u>		
<u>DISPOSAL FUND</u>		
Solid Waste Activities	\$2,293,382	\$865,517

- RESOLUTIONS -

RESOLUTION NO. RS2002-926 (WHITMORE) - This resolution approves property located at the northwest intersection of 43rd Avenue North and Alley #1203 to be used as a waste transfer station for the benefit of Tennessee Waste. Tennessee Waste has filed a request for a special exception with the Metro board of zoning appeals to construct a waste transfer station on this location. The zoning text of the Metro Code of laws requires that before the board of zoning appeals can act on such as request, the council must approve the location by adoption of a resolution. Tennessee Waste is requesting variances in the specific conditions outlined in the zoning ordinance applicable to waste transfer stations. The Code requires that there be a minimum ten acre lot, that buildings must be located at least 150 feet from any residential zoning boundary, that the entire facility be fenced in, and that all loading and unloading take place in an enclosed building.

If the council does not adopt or defeat this resolution within sixty (60) days, it shall be deemed approved by the council.

There is a substitute resolution to correct the description of the location of the property.

RESOLUTION NO. RS2002-943 (PONDER & STANLEY) - This resolution authorizes the director of public property administration to exercise an option to purchase approximately 32 acres of property on John Hager Road in Hermitage on which to construct the new Ruby Major Elementary School and a future middle school. Pursuant to the Metropolitan code of laws, the director of public property administration is authorized to negotiate for the purchase of property for such purposes and to seek to obtain an option to sell from the owner. On January 8, 2002, the director of public property obtained an option to purchase the property for \$640,000 from landowner Mary Gladys Hagar George. Metro has the option to purchase the property at any time within 180 days of January 8, 2002. The Metropolitan board of public education has approved the referenced site. No purchase can be consummated until it has been approved by the Metropolitan Council.

This resolution has been referred to the planning commission. Since this is a mandatory referral to the planning commission, this resolution may not be adopted until a recommendation has been made by the planning commission.

The Metro Code requires that a public hearing be held on the acquisition of property for a school, and the planning and zoning committee has scheduled the public hearing at its meeting on Tuesday, February 19, 2002, at 5:00 p.m.

RESOLUTION NO. RS2002-953 (HADDOX & SHULMAN) - This resolution approves a contract between the Metropolitan board of health and Matthew Walker Comprehensive Health Center, Inc., permitting Matthew Walker to compensate the health department for its assistance in Matthew Walker's study to reduce diabetes and cardiovascular disease among African Americans. The term of the contract is from September 30, 2001 through September 30, 2002, with a possible one-year extension.

(continued on next page)

RESOLUTION NO. RS2002-953 (continued)

Under this contract, Matthew Walker agrees to pay a total of \$141,664 on a monthly basis to the health department to fund the equivalent of one full-time and two part-time support positions. These positions will consist of a research analyst, an associate evaluation director, and a GIS specialist. Under this contract, the health department will conduct telephone surveys and manage the data received. This is part of a program entitled Nashville REACH 1010 Demonstration Project, and is an attempt to collect and manage data to determine a plan to reduce cardiovascular disease and diabetes in African Americans in Nashville.

RESOLUTION NO. RS2002-954 (HADDOX & SHULMAN) - This resolution approves an amendment to the grant from the state department of health to the Metropolitan board of health for various health services. The grant funds programs relating to sexually transmitted disease, tuberculosis services, oral health services, adolescent pregnancy prevention, and community education programs. This amendment provides an additional \$75,000 for homeland security services to detect and investigate communicable disease outbreaks and acts of bioterrorism. The amendment increases the total amount of the grant to \$7,787,641 for a budget period of July 1, 2001 through June 30, 2002.

RESOLUTION NO. RS2002-955 (WHITMORE & SHULMAN) - This resolution approves an amendment to the current lease agreement between the Metropolitan Government and the Nashville Sounds Baseball Club, L.P., for lease of the Greer Stadium site, as enacted by Ordinance No. O98-1044. The present site and stadium, located in a part of Fort Negley Park, has been under lease between the parties since 1977.

With the new owners of the Sounds, the current lease agreement is for a ten-year term, beginning January 1, 1998, and expiring December 31, 2008. Under the present lease terms the baseball team, which currently has a Triple A professional baseball franchise, is to pay rental based upon the gross revenues of the baseball operation. The rental payments are based upon 5% of the first \$300,000 of gross revenues, plus 7% of the baseball team's gross revenues in excess of \$300,000. The rental payments are to be paid on October 10th of each year and the baseball team is to provide Metro with an outside audit at the time of the payments to demonstrate the adequacy of the payments made each year. Also under the terms of the 1998 lease agreement, Metro provided \$2 million to the baseball team, which was to be used for capital improvements to the stadium including, but not limited to, improvements in concession equipment, electrical upgrades, roof replacement, and storm water drainage improvements. If the baseball team terminates the lease prior to the expiration of the term, the team must pay \$1 million in liquidated damages, less the amount of actual lease payments paid to Metro.

In the event the team's rental payment is not made within ten days of the due date (or within ten days of an applicable cure period) the amount due is to bear interest at the rate of 1% over the prime rate of interest.

The baseball team has been unable to fulfill the rental payment provisions of the current lease and is now indebted to Metro. In satisfaction of Metro's claim for past due rent, this proposed amendment allows the team to pay to Metro the sum of \$491,915 according to the following schedule:

(continued on next page)

RESOLUTION NO. RS2002-955 (continued)

<u>Payment Amount</u>	<u>Payment Date</u>
\$50,000	January 25, 2002
\$50,000	February 18, 2002
\$50,000	March 4, 2002
\$73,447	May 1, 2002
\$17,892	May 31, 2002
\$50,576	June 30, 2002
\$100,000	July 15, 2002
\$100,000	July 31, 2002

The proposed amendment supercedes the existing provisions governing rent and bases the future rent on the net income of the baseball team as determined by an outside audit. The baseball team will pay to Metro 25% of the first \$400,000 of net income, plus 20% of the net income between \$400,001 and \$1 million, plus 12.5% of the net income over \$1 million. The amendment further provides that within 30 days of the ending date of the term or date of earlier termination, the baseball team will pay Metro the greater sum of the actual rent owed under the agreement, or \$1 million minus the sum of the rental payments made since 1997.

The proposed amendment further provides that Metro will pay \$250,000 on or before July 31st of each year to the baseball team for further capital improvements, as long as each past due rent payment is paid on time. The baseball team must provide detailed schedules showing that the capital improvement funds were used for intended purposes and Metro has the right to audit the team's records. If the baseball team terminates the agreement prior to January 1, 2005, the team must pay refunds and damages as follows:

- 100% of capital maintenance payments plus \$500,000 if terminated in 2002; or
- 50% of capital maintenance payments plus \$250,000 if terminated in 2003; or
- 25% of capital maintenance payments plus \$100,000 if terminated in 2004.

The term of the lease remains the same, expiring on December 31, 2008.

The amended agreement also allows Metro to use Greer Stadium for events when not in use by the baseball team. Metro is entitled to retain all proceeds from the events, but will reimburse the baseball team for their employee cost and utility cost for such events.

This resolution has been referred to the planning commission and the parks and recreation board, and may not be adopted by the council until the resolution receives the approval of the board of parks and recreation and a recommendation from the planning commission.

Essentially, this amendment (1) sets a payment schedule for past due rent; (2) forgives interest owed on the past due rent and approximately \$100,000 in disputed back rent; (3) provides the Sounds an additional \$1,750,000 for capital improvements over the remaining term of the lease; and (4) reduces the annual rental payments to Metro.

With this amendment, it is hoped that the Sounds can operate successfully at Greer Stadium in the coming years.

RESOLUTION NO. RS2002-956 (MCCLENDON & SHULMAN) - This resolution ratifies an agreement with the state treasury department in order to deposit local funds for the Chestnut Street bridge over the CSX railroad project into the local government investment pool. Ordinance No. BL2001-945 approved the contract between the state department of transportation and the Metropolitan Government for the Chestnut Street bridge project. Pursuant to state law, local funds to be used for Tennessee department of transportation projects can be deposited into the local government investment pool in order to earn interest on the funds until they are used.

Ordinance No. O85-740 requires that the local government investment pool agreement be ratified by resolution of the Metro council.

RESOLUTION NO. RS2002-957 (SHULMAN) - This resolution authorizes the Metropolitan department of law to compromise and settle the claim of Ameristeel against the Metropolitan Government for \$47,403.44. On December 10, 2001, Ameristeel sustained substantial water damage to its new office building at 4280 Sidco Drive as a result of a sewer back up caused by a blockage of heavy grease in the Metro sewer segment. The sewage backup left water standing two inches deep in the Ameristeel building and the carpeting and sheetrock had to be replaced. Ameristeel did not submit any damages for loss of business, although the office was closed for three business days.

The department of water services and the health department are working on a new grease policy to make grease contributors responsible for their grease discharge. Several restaurants including Cracker Barrel and Waffle House contribute to a grease problem in the area of the incident.

The department of law believes that \$47,403.44 is a fair settlement and recommends that this claim be settled. This resolution directs that this amount be paid from the self-insured liability fund.

RESOLUTION NO. RS2002-958 (SHULMAN) - This resolution authorizes the Metropolitan department of law to compromise and settle the claim of Linda Glisper against the Metropolitan Government for \$15,000. On June 5, 2001, Gerry Hutcheson, a Metro police officer, was involved in a traffic accident, which caused property damage and personal injuries to Ms. Glisper. Ms. Glisper was stopped in front of Officer Hutcheson at a traffic light on Linbar Drive when Officer Hutcheson's patrol car struck the rear of the claimant's car, causing her to bump the vehicle in front of her. Officer Hutcheson claims that his foot slipped off of the brake pedal and onto the accelerator causing him to hit Ms. Glisper's car. Ms. Glisper sustained \$966.82 in lost wages, \$7,648 in medical bills, and \$813.17 in property damage to her car. No damage was done to the patrol car. Ms. Glisper was initially treated at the Summit Hospital emergency room and was referred to her primary care physician. She was then treated by a neurologist and underwent two months of physical therapy.

Disciplinary action for Officer Hutcheson consisted of a one day suspension.

The department of law believes that \$15,000 is a fair settlement and recommends that this claim be settled. This resolution directs that this amount be paid from the self-insured liability fund.

RESOLUTION NO. RS2002-959 (SHULMAN) - This resolution authorizes the Metropolitan department of law to compromise and settle the lawsuit of Brenda Faye Dorris, on behalf of the estate of Thelma Louise Adcox, deceased, against the Metropolitan hospital authority in the amount of \$40,000. Ms. Adcox died following treatment at the Bordeaux nursing home and Metropolitan General Hospital. This wrongful death lawsuit was filed against Metro and John Brewer, a nurse practitioner and former Metro employee, alleging negligence and civil rights violations that occurred between February 16-18, 2000. Metro is allegedly negligent under the doctrine of respondeat superior (employer is responsible for actions of its employee), and Metro allegedly violated Ms. Adcox's civil rights by failing to provide adequate training and supervision of John Brewer and by hiring unqualified and incompetent physicians.

Ms. Adcox began having stomach pain on February 8, 2000, for which she was given antibiotics. On February 14, 2000 she was diagnosed by her physician, Dr. Daisy Sator, as having a possible urinary tract infection ("UTI"). Dr. Sator failed to adequately diagnose Ms. Adcox as having a gastrointestinal bleed. According to hospital records, Dr. Sator was on leave on February 17th and 18th, although John Brewer claims that she was in the building and he conversed with her regarding the treatment of Ms. Adcox. John Brewer relied on the misdiagnosis of Dr. Sator and diagnosed Ms. Adcox as having a UTI. He then prescribed another antibiotic and ordered "force fluids." The next day John Brewer reviewed the lab results but did not notice that the test results indicated that she was bleeding internally. Ms. Adcox was transported to General Hospital on the morning of February 18, 2000, where her condition deteriorated and she died on February 22, 2000. Her causes of death are listed as acute respiratory distress, respiratory failure, acute GI bleeding and acute renal failure. John Brewer left the employ of Metro approximately two months after this incident.

The physicians who treated Ms. Adcox at the nursing home settled independently in 2000. Thus, this lawsuit concerns only the negligence of the nurse practitioner, John Brewer. The plaintiff has demanded \$100,000 from Metro and \$100,000 from John Brewer individually. Ms. Adcox never married and

had no children. She had three nieces and nephews. John Brewer maintained his own liability insurance and at the conclusion of a settlement conference plaintiff agreed to accept \$40,000 from Metro and \$10,000 from John Brewer.

The department of law believes that \$40,000 is a fair settlement and recommends that this lawsuit be settled. This resolution directs that this amount be paid from the self-insured liability fund.

- BILLS ON SECOND READING -

ORDINANCE NO. BL2001-833 (BLACK) – This ordinance abandons Alley No. 1088, from Brick Church Pike to its terminus located north of Haynie Avenue. This abandonment is being requested by Mark Carver of Sherrard & Roe, PLC, for Budig Realty, LLC, the abutting property owner.

This abandonment has been approved by the planning commission and the traffic and parking commission. The necessary consents of abutting property owners are on file with the Metro clerk.

ORDINANCE NO. BL2002-945 (GREER, MCCLENDON & SHULMAN) - This ordinance authorizes the acceptance of a contract between the state department of transportation and the Metropolitan Government for improvements to the bridge on Chestnut Street over the CSX railroad. The total cost of the project is \$1,590,000, of which Metro will pay 20% of the cost (\$318,000) and the state will pay the remaining 80%. Metro agrees to maintain and provide electric power to all devices, wiring, and signs regulating traffic.

This ordinance also provides that any additional contracts required for this project, such as for installation and maintenance of traffic signals, street lighting, and the appropriation of funding for the relocation of water mains and sewer lines, may be approved by a resolution by the council.

ORDINANCE NO. BL2002-948 (WILLIAMS) - This ordinance readopts the Metropolitan Code to include all ordinances adopted by the Metropolitan Council before July 17, 2001.

ORDINANCE NO. BL2002-949 (MAJORS & BRILEY) - This ordinance amends Ordinance No. O92-210 by extending the sunset date for the 1992 Procurement Code from June 30, 2002 to December 31, 2002. The 1992 Procurement Code, as adopted by Ordinance No. O92-210, restated the purchasing procedures for the Metropolitan Government and created a procurement standards board. The 1992 Procurement Code was primarily just a re-write of the purchasing laws that were already in place. By extending the sunset date, more time is allowed to study the purchasing Code for possible revisions.

ORDINANCE NO. BL2002-950 (BRILEY) - This ordinance approves an amendment to a contract between the Metropolitan Government and Volume Services, Inc. for food and beverage services for the Nashville Convention Center. The original term of the contract was from January 31, 1997 to January 30, 2002. This amendment extends the term of the contract to January 30, 2004. In consideration for the extension, Volume Services, Inc. will invest an additional \$350,000 upon signing of the extension, of which \$300,000 will go toward the renovation of the convention center ballroom and \$50,000 will be spent on additional smallwares. The \$350,000 will be amortized in monthly installments over a four-year period. In the event the contract is terminated by either party before the cash grant is amortized over the four-year period, Metro will repay Volume Services, Inc. the unamortized portion within thirty days of the termination. This is a typical arrangement between government owned facilities and concessions vendors.

ORDINANCE NO. BL2002-951 (HAND) - This ordinance amends the official street and alley acceptance and maintenance map for the Metropolitan Government, as enacted by Ordinance No. BL2001-916, by naming an unnamed road "White Bridge Place." The unnamed access road abuts White Bridge Road near the Charlotte Pike intersection next to the I-40 entrance ramp. Naming the road "White Bridge Place" will improve E-911 efficiency because parcels on this road are currently listed as "White Bridge Place". This ordinance is requested by the interim director of public works.

This ordinance has been approved by the planning commission and the emergency communications district board.

ORDINANCE NO. BL2002-952 (TURNER & MAJORS) - This ordinance amends the official street and alley acceptance and maintenance map for the Metropolitan Government, as enacted by BL2001-916, by renaming a portion of Belmont Boulevard "Jamesborough Place". This portion of Belmont Boulevard lies between Lone Oak Road and Jamesborough Place. This renaming is requested by the interim director of public works.

This ordinance has been approved by the planning commission and the emergency communications district board.

ORDINANCE NO. BL2002-953 (MCCLENDON) - This ordinance amends the official street and alley acceptance and maintenance map for the Metropolitan Government, as enacted by BL2001-916, by closing alley # 1846. This alley is between Glenrose Avenue and I-440. Easements are retained by Metro and its contractors for the right to construct, operate, and maintain existing or future utilities. Any future construction in the area of the existing utilities must be approved by the director of public works and/or the director of water and sewerage services, as well as by the utility companies.

This closure is requested by abutting property owner James Haygood on behalf of all of the abutting property owners. Staff would point out that it is unclear from the petition whether all affected property owners have consented to the closing.

This ordinance has been approved by the planning commission and the traffic and parking commission.

ORDINANCE NO. BL2002-954 (WHITMORE & BLACK) - This ordinance amends the official street and alley acceptance and maintenance map for the Metropolitan Government, as enacted by BL2001-916, by closing a portion of alley # 932 abutting the CSX railroad track between 25th and 26th Avenue North. This alley is serving no purpose and the closure is requested by abutting property owner Lawrence Murphy of Murphy Plumbing Co. Easements are retained by Metro and its contractors for the right to construct, operate, and maintain existing or future utilities. Any future construction in the area of the existing utilities must be approved by the director of public works and/or the director of water and sewerage services, as well as by the utility companies.

The properly executed application indicating consent of the affected property owners is on file with the planning commission.

ORDINANCE NO. BL2002-955 (SUMMERS) - This ordinance amends the official street and alley acceptance and maintenance map for the Metropolitan Government, as enacted by BL2001-916, by closing a portion of unimproved alley # 1190 located adjacent to Park Circle. Easements are retained by Metro and its contractors for the right to construct, operate, and maintain existing or future utilities. Any future construction in the area of the existing utilities must be approved by the director of public works and/or the director of water and sewerage services, as well as by the utility companies.

This closure is requested by abutting property owner Charles V. Smith. The properly executed application indicating consent of the affected property owners is on file with the planning commission.

This ordinance has been approved by the planning commission and the traffic and parking commission.

- BILLS ON THIRD READING -

ORDINANCE NO. BL2001-890 (SHULMAN) - This ordinance, as amended, amends the official street and alley acceptance and maintenance map for the Metropolitan Government, as enacted by Ordinance No. BL2001-916, by closing an unbuilt portion of Oaklawn Avenue between Estes Road and Wilson Boulevard South. Metro will retain an easement for the purpose of constructing and maintaining utilities. This closure is requested by abutting property owners, Jack and Charlene Goostree.

This ordinance has been approved by the planning commission and the traffic and parking commission.

ORDINANCE NO. BL2001-892 (WALLACE) - This ordinance, as amended, amends the Official Street and Alley Acceptance and Maintenance Map for the Metropolitan Government, as enacted by Ordinance No. BL2001-916, by closing Alley No. #86 and a portion of Alley No. #87. The alleys run perpendicular to each other off 7th Avenue South. This closure is requested by Richard Ropelewski for

abutting property owners. This ordinance has been approved by the planning commission and the traffic and parking commission.

ORDINANCE NO. BL2001-925 (MCCLENDON) - This ordinance, as amended, amends Section 10.20.120(a) of the Metropolitan Code to permit the use of receptacles furnished by the Metropolitan Government in the collection of solid waste. This section of the code currently limits the size of the containers to thirty gallons and weight of no more than fifty pounds. The amendment allows the department of public works to furnish containers with a capacity of greater than thirty gallons with weight capacity as set by the director of public works. This amendment is necessary for the implementation of the mayor's solid waste disposal plan and the contract between Metro and Toter, Inc. for the purchase of the 300,000 waste receptacles.

SUBSTITUTE ORDINANCE NO. BL2002-942 (WHITMORE, MAJORS & HAUSSER) - This substitute ordinance amends the Official Street and Alley Acceptance Map for the Metropolitan Government, as enacted by Ordinance No. BL2001-916, by abandoning Jo Johnston Avenue, between 19th Avenue North and 20th Avenue North, to accommodate the expansion of Head Middle School. Traffic will be rerouted up 19th Avenue to Warner Avenue, then down 20th Avenue North connecting to the renamed 21st Avenue North (formerly Jo Johnston Avenue). The traffic study indicated that these streets are capable of handling the increased traffic capacity caused by the diversion, though some residents may experience increased difficulty exiting their driveways. The existing easements within the street are retained until such time as replacement service is provided. This ordinance is requested by Volunteer Surveying, Inc., on behalf the Metro board of education. The Metropolitan Government is the adjoining land owner.

This ordinance has been approved by the planning commission and the traffic and parking commission.

ORDINANCE NO. BL2002-944 (MCCLENDON) - This ordinance authorizes Centex Homes to participate with the Metropolitan Government, on behalf of the department of water and sewage services, for the construction of sewerage system extensions at the Willowmet Phase 2 subdivision and the Owl Creek Trunk sewer project in northeast Williamson County. Centex agrees to pay Metro \$56,000 for 28 sewer connections at a cost of \$2,000 each to go toward the cost of the Owl Creek Trunk sewer project. Metro is authorized to provide sewerage services in this area of Williamson County, and Metro built the Owl Creek Trunk Sewer project in anticipation of developers participating in the service at a cost of \$2,000 per connection. Future amendments to this agreement may be made by resolution adopted by the Metro council.