

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: **November 16, 2004**

RE: **Analysis Report**

Balances As Of:	<u>11/10/04</u>	<u>11/12/03</u>
<u>GSD 4% RESERVE FUND</u>	* \$13,429,480	\$17,664,408
<u>CONTINGENCY ACCOUNTS</u>		
GSD	\$50,000	\$50,000
USD	\$50,000	\$50,000
<u>GENERAL FUND</u>		
GSD	Unavailable	Unavailable
USD	Unavailable	Unavailable
<u>GENERAL PURPOSE</u>		
<u>SCHOOL FUND</u>	Unavailable	Unavailable

* Assumes estimated revenues in fiscal year 2005 in the amount of \$18,738,500.

– RESOLUTIONS –

RESOLUTION NO. RS2004-539 & RS2004-574 (WALLACE) – These two resolutions provide proposed amendments to the Metropolitan Charter. The Council, pursuant to the Charter, may only adopt two resolutions during the term of the Council that submit amendments to the voters for ratification. Each proposed amendment to the Charter must be adopted by 27 affirmative votes of the Council, and the resolution itself submitting the amendment must be adopted by 27 affirmative votes in order to become effective. These resolutions provide that the date for holding the referendum election on these Charter amendments is to be the August general election in 2006, since there are no regular elections to be held in 2005. State election law requires that resolutions requiring the holding of elections on questions submitted to the people which are to be held at the regular election must be filed with the election commission not less than 60 days prior to the August election. Thus, these resolutions need to be deferred indefinitely to avoid the holding of a special election.

Resolution No. RS2004-539 provides a proposed amendment to the Metropolitan Charter to clarify that the office of mayor is limited to two consecutive terms. When the Charter was adopted in 1963, the office of mayor was limited to three consecutive four-year terms. The office of mayor was the only office that was term-limited by the Charter. In 1994, the Charter was amended by petition and referendum election to provide that all elected offices created by the Charter are limited to two consecutive four-year terms. However, the 1994 Charter amendment initiated by the citizens did not address the specific Charter provision related to the term limit for the office of mayor. Therefore, an undetermined legal question remains as to whether the later term limit provision trumps the prior term limit provision regarding the office of mayor, or whether the office of mayor continues to have a term limit of three consecutive terms. This Charter amendment would provide that the office of mayor is limited to two terms, in accordance with the general term limit provision adopted in 1994. The charter revision commission did not recommend approval of this amendment and recommended that the "For the Ballot" language be modified.

Resolution No. RS2004-574 provides a proposed amendment to the Metropolitan Charter to require that before a person may be appointed as an interim or acting director of a department, board, or commission, such person must have been an employee of that particular department, board, or commission for at least two years. The Charter currently provides that the civil service commission rules are to provide for the method of certifying vacancies and eligibility for persons to fill such vacancies. The Charter further provides that the civil service commission rules are to be given the full force and effect of law.

RESOLUTION NO. RS2004-575 (JAMESON) – This resolution sets a public hearing to be held at the Tuesday, December 7, 2004, council meeting for a proposed amendment to the Capitol Mall redevelopment plan. The Capitol Mall redevelopment plan basically governs the redevelopment of the downtown area. State law requires that a public hearing be held prior to final approval of an amendment to a redevelopment plan. This resolution also directs the Metropolitan clerk to publish the notice of public hearing in the November 22, November 29, and December 6, 2004, issues of *The Tennessean*.

Ordinance No. BL2004-404, which is on first reading, provides for the amendment. An analysis of the amendment will be provided when the ordinance is on second reading.

RESOLUTION NO. RS2004-576 (NEIGHBORS) – This resolution authorizes the issuance of general obligation public improvement bonds in the amount of \$41 million to finance various capital

improvement projects. This bond issue is essentially a replacement for the capital outlay notes issued for these projects as part of the Mayor's capital spending plan approved by the Council in July 2004. Capital outlay notes are a short-term debt instrument issued for an initial term of three years each, and renewable for two additional three year terms. At least one-ninth of the principal of capital outlay notes has to be repaid each year. By authorizing the issuance of general obligation bonds in place of the capital outlay notes, Metro will be able to take advantage of the commercial paper program and achieve a lower interest rate than the capital outlay notes. Commercial paper is issued by Metro as needed to cover interim construction costs until long-term bonds are actually sold. The true interest cost of these bonds is not to exceed 6% per annum. The projects to be funded by these bonds are as follows:

1. \$1,952,700 for the circuit court clerk traffic violations bureau integrated case management system.
2. \$1,900,000 for convention center repairs.
3. \$500,000 for installation and enhancement of web-based electronic budget projects for the finance department.
4. \$8,625,000 for upgrades to the computer systems of the Metropolitan Government.
5. \$500,000 to begin the implementation of the Warehouse Needs Study recommendations for the finance department.
6. \$1,200,000 for implementation of the point of sale system study managed by the office of the treasurer.
7. \$1,000,000 for internet-based electronic procurement systems that offer procurement processes, contract, and grant management systems.
8. \$140,000 for General Hospital technology upgrades.
9. \$2,665,000 for the General Hospital integrated information system.
10. \$3,000,000 for the department of general services to implement the shared services concept within the operation of the Metropolitan Government.
11. \$150,000 to acquire and manage a fleet information system by the department of general services.
12. \$150,000 for the department of human resources to store, transmit, and file employee performance management files and forms.
13. \$1,500,000 for the purchase and installation of tax accounting system hardware and software for the ITS department.
14. \$1,500,000 for the purchase and installation of PBX telephone system hardware and software for the ITS department.
15. \$3,300,000 to move applications from the IBM mainframe to other processor platforms for the ITS department.
16. \$1,500,000 for hardware and software necessary to scan and save paper records as digital images for the ITS department.
17. \$565,400 to acquire software tools and equipment and to make facility upgrades for the ITS department.
18. \$650,200 for equipment and software tools to accommodate growth of the data center for the ITS department.
19. \$400,000 for upgrades to the ITS computer room.
20. \$308,000 for security software and network equipment for the ITS department.
21. \$7,173,400 to purchase buses and other facility improvements for the Metro transit authority.
22. \$1,100,000 to address ADA issues, roofing, paving, and other repair items at the fairgrounds.
23. \$500,000 for major maintenance projects at the fairgrounds.

RESOLUTION NO. RS2004-577 (NEIGHBORS) – This resolution authorizes the issuance of general obligation public improvement bonds to fund various improvements to the district energy system. In

December 2001, the Council authorized the issuance of \$66.7 million in revenue bonds to finance the construction of the new district energy system. The district energy system was constructed to replace the decommissioned thermal transfer plant. The revenue bond proceeds were to be used for land acquisition, improvements to the steam distribution and customers' energy use systems, metering, and a thermal storage system. Only net revenues from the operation of the system are to be used to repay the 2001 revenue bonds, not the ad valorem tax revenues of the Metropolitan Government.

This resolution authorizes the issuance of \$10 million in general obligation bonds for additional district energy system improvements. The district energy system projects to be financed by these bonds include installation and equipping of customer metering, new connections at the downtown library and symphony hall, and installation and equipping of improvements at the Renaissance Hotel and at the Fourth and Church Street connection. These bond proceeds will also pay interest costs during construction, and to reimburse Metro for all legal, fiscal, architectural, administrative, and engineering costs previously spent in connection with these projects. The maximum interest rate of these bonds is not to exceed 6% per annum.

The director of finance has stated that general obligation bonds are the most economically advantageous source of funding for these projects. Although issuing general obligation bonds and using Metro's commercial paper program will result in lower borrowing costs, general obligation bonds are secured by and payable from ad valorem taxes, unlike the revenue bonds issued for the initial construction of the district energy system, which are payable exclusively from net revenues derived from the operation of the district energy system.

RESOLUTION NO. RS2004-578 (GOTTO & TYGARD) – This resolution appropriates \$20,000 from the contingency account of the general fund of the general services district to Exchange Club Family Center, Inc., to provide partial funding for its program services. The contingency account of the general fund has typically been reserved by the council for emergency purposes. Exchange Club Family Center, Inc., is a nonprofit organization that provides child abuse prevention services consisting of parent education classes, in-home family visitation, mentoring, and community education.

State law allows local government to make grants to nonprofit organizations, provided that certain information is submitted by the nonprofit proving their eligibility for such funds. Exchange Club Family Center has submitted evidence of its tax exempt status, a statement of the proposed use of the funds and the program that serves the residents of Metropolitan Government, and a copy of its annual audit for its last fiscal year as required by state law.

RESOLUTION NO. RS2004-579 (SHULMAN & NEIGHBORS) – This resolution approves a contract between Storm Reconstruction Services and the Metropolitan Government for municipal solid waste collection services. The Metropolitan Code of Laws provides that all contracts related to solid waste collection and disposal in excess of \$500,000 must be approved by resolution of the Council receiving at least 21 affirmative votes. On October 19, 2004, the Council approved three contracts for the collection of solid waste within the urban services district. This resolution approves a contract solely for the collection of brush within the area of the Metropolitan Government.

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RESOLUTION NO. RS2004-579 (continued)

This contract was awarded to Storm Reconstruction Services, an Alabama corporation, pursuant to a request for proposals (RFP) process. Three companies submitted proposals pursuant to the RFP. The

term of the contract is for a five-year period commencing October 1, 2004. Metro has the option of extending the contract for up to two additional five-year periods. The amount to be paid by Metro for brush collection services varies depending on the route locations and number of rotations. The brush collection service is divided into twelve separate routes set by the department of public works. The pricing provides for five annual collection rotations for each route, plus extra rotations if they are determined to be necessary. Metro public works will provide brush collection for Routes 2, 11, and 12, although a pricing structure for each of the routes has been set by contract. The total cost to Metro for the collection of brush on the nine routes five times a year is \$1,865,667.

The rates to be paid by Metro under this contract, not including the annual cost escalator, are as follows:

Route 1: \$34,421.96 for each rotation
Route 2: \$24,083.11 for each rotation
Route 3: \$28,542.52 for each rotation
Route 4: \$22,612.81 for each rotation
Route 5: \$60,245.26 for each rotation
Route 6: \$56,496.74 for each rotation
Route 7: \$41,747.88 for each rotation
Route 8: \$42,654.58 for each rotation
Route 9: \$59,290.05 for each rotation
Route 10: \$27,121.61 for each rotation
Route 11: \$47,824.00 for each rotation
Route 12: \$21,780.20 for each rotation

In addition to the set route payments, if more than 20,000 tons are collected in a year, Storm Reconstruction Services will be paid an additional \$129 per ton. The contractor also agrees to collect brush resulting from an emergency such as a tornado, ice storm, or high winds at the rate of \$129 per ton. The contract further provides that the contractor, if requested by Metro, will provide construction and demolition debris transportation and disposal services at the rate of \$64.50 per ton, as well as chipping services at the rate of \$12.50 per ton. Storm Reconstruction Services will be responsible for furnishing its own collection trucks. No more than 20% of the collection trucks may be more than seven years old at the time of commencement of the contract. Storm Reconstruction Services is required to maintain workers' compensation, general liability, and automobile insurance naming the Metropolitan Government as additional insured. The company must also submit a performance bond or letter of credit to Metro for 100% of the proposed annual cost of services.

The contract includes liquidated damages provisions for the purposes of computing the amount of loss to Metro as a result of the contractor's failure to fulfill the requirements of the contract. The contract also provides for incentive payments by Metro based upon a finding of exceptional service to residents. Metro will conduct a survey of customers in at least two randomly chosen months per year. If 90% or more of those surveyed rate the quality of their collection service as excellent, then the contractor will be paid an incentive payment in the amount of \$10,000.

RESOLUTION NO. RS2004-580 (COLE & NEIGHBORS) – This resolution approves a grant in the amount of \$75,000 from the state department of health to the Metro board of health to provide primary dental services to the homeless at the Downtown Clinic. This grant is for a term of one year beginning July 1, 2004, and expiring June 30, 2005. The funds will cover the partial salary for an attending dentist from Meharry School of Dentistry to supervise dental care providers and to treat

some dental clinic patients. The funding will also be used to employ an office assistant. It is estimated that services will be provided to approximately 1,200 patients.

RESOLUTION NO. RS2004-581 (COLE & NEIGHBORS) – This resolution approves a grant in the amount of \$1,597,400 from the state department of health to the Metropolitan health department to provide nutrition education, breastfeeding promotion services, and supplemental food to eligible women, infants, and children. These are federal pass-through funds used to pay the salaries of health department employees that administer federal Women, Infants and Children (WIC) program services. The term of the grant is from October 1, 2004, through September 30, 2005.

RESOLUTION NO. RS2004-582 (NEIGHBORS) – This resolution approves an annual grant in the amount of \$68,500 from the state arts commission to the Metro arts commission for the current fiscal year. The funds will be used for general operating support of the arts commission. There is a required local match in the amount of \$68,500 to be provided from the Metro arts commission budget.

There is a proposed substitute resolution that clarifies that these funds are to be used solely for operating support of the arts commission, not as pass-through funding for other arts organizations.

RESOLUTION NO. RS2004-583 (NEIGHBORS) – This resolution approves a grant in the amount of \$400,191 from the state commission on children and youth to the Metropolitan Government for juvenile accountability incentive block grant program services. These funds are federal pass through dollars that will be used to fund certain salaried positions and professional services to provide greater accountability on the part of delinquent offenders. The term of the grant is from October 1, 2004 through September 30, 2005, with a possible one-year extension. Metro is required to provide matching funds in the amount of \$44,466 from the juvenile court's operating budget.

RESOLUTION NO. RS2004-584 (RYMAN & NEIGHBORS) – This resolution accepts a grant in the amount of \$965,117 from the state department of transportation to the Metropolitan police department to target the identification and prosecution of aggressive drivers. This federal pass-through grant will be used to fund an enhanced enforcement team of officers to target aggressive driving behaviors such as following too close, speeding, reckless driving, passing on the shoulder, cutting in and out of traffic, and the failure to signal multiple lane changes. The enforcement team will focus on targeted areas with high-density traffic and areas reporting high DUI arrests. Approximately \$790,000 of these funds will be used for salaries and benefits, and approximately \$142,500 is designated for the purchase of equipment. The term of the grant is from October 1, 2004, through September 30, 2005.

RESOLUTION NO. RS2004-585 (RYMAN & NEIGHBORS) – This resolution approves a grant in the amount of \$4,975 from the state department of transportation to the Metropolitan Government for the sober ride project. The sober ride project is a service that provides free rides home on New Year's Eve and St. Patrick's Day to Davidson County residents too intoxicated to drive. These federal pass-through funds will be used to purchase T-shirts, flags, and book maps. The term of the grant is from October 1, 2004, through September 30, 2005.

RESOLUTION NO. RS2004-586 (NEIGHBORS) – This resolution approves a grant in the amount of \$131,520 from the state department of labor and workforce development to the Nashville career advancement center (NCAC) to provide licensed practical nurse training. These funds will be used to train twenty-four individuals at the Tennessee Technology Center in Murfreesboro to become licensed practical nurses. This class will be partly financed by National Healthcare Corporation. This program is authorized through the provisions of the Workforce Investment Act of 1998, which is administered by the NCAC for the counties of Davidson, Rutherford, Wilson, and Trousdale. The term of this grant is from January 1, 2005, through December 31, 2005, with a possible extension of two additional years.

RESOLUTION NO. RS2004-587 (NEIGHBORS) – This resolution approves a grant in the amount of \$5,136 from the state department of human services to the Nashville career advancement center (NCAC) to compensate NCAC for costs associated with housing vocational rehabilitation personnel at the career centers. A full-time vocational rehabilitation counselor is housed at the career centers for the purpose of receiving referrals and determining eligibility for services. This grant is primarily for occupancy-related expenses. The term of the grant is from July 1, 2004, through June 30, 2005, with a possible one-year extension.

RESOLUTION NO. RS2004-588 (NEIGHBORS) – This resolution approves a grant in the amount of \$146,365.92 from the state department of labor and workforce investment to the Nashville career advancement center to fund costs associated with providing space and access to training programs administered through the federal Workforce Investment Act. These federal pass-through funds will be used to provide for the administration of the career center facility including occupancy, supplies, utilities, and equipment. The term of the grant is from July 1, 2004, through June 30, 2005, with a possible one-year extension.

RESOLUTION NOS. RS2004-589 & RS2004-590 – These two resolutions approve grants between the Tennessee department of transportation (TDOT) and the Metropolitan Government for road resurfacing. Pursuant to these agreements, TDOT will be responsible for covering 75% of the resurfacing cost, with Metro paying the remaining 25%. The projects are to be completed by July 31, 2006.

Resolution No. RS2004-589 (Foster, Shulman & Neighbors) approves the contract for the resurfacing of a three-mile section of Edmondson Pike from Old Hickory Boulevard to Nolensville Road. The total estimated cost for this project is \$558,800, with the state paying \$419,100 and Metro paying \$139,700.

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RESOLUTION NOS. RS2004-589 & RS2004-590 (continued)

Resolution No. RS2004-590 (Greer, Loring & Others) approves the contract for the resurfacing of a 4.6-mile section of Elm Hill Pike from east of Fesslers Lane to Donelson Pike. The total estimated cost of this project is \$746,200, with the state paying \$559,650 and Metro paying \$186,550.

RESOLUTION NOS. RS2004-591 & RS2004-597 (NEIGHBORS & SHULMAN) – These two resolutions approves amendments to contracts between the state department of transportation and the Metropolitan Government for continued improvements to the Metropolitan Government traffic signalization system. In 2001, the Council approved a contract for the employment of a professional engineering consulting firm to provide Intelligent Transportation System design services for fiber optic communications cable and closed circuit television cameras to be used on selected streets within Nashville. A separate contract was entered into for the implementation of the ITS system manager for the Metro traffic operations center.

Resolution No. RS2004-591 amends the prior contract for the ITS system manager to redefine the scope of work. Under the revised scope of work, a professional engineering consulting firm will be retained to provide ITS planning and design services for the traffic operations center. The first phase of the project involves the implementation of a communications and operations plan. The second phase includes the implementation of the Metro traffic operations center to be operated by the department of public works.

Resolution No. RS2004-597 amends the prior contract for design services to include construction as a part of the scope of work. The contract estimates that the design and construction of fiber optic communication cable will be installed along 15-20 miles of arterial corridors. The total budget for this contract, as amended, is \$2,363,842, with a local match of \$472,769.

RESOLUTION NO. RS2004-592 (NEIGHBORS & SHULMAN) – This resolution approves a grant in the amount of \$1,400,000 from the state department of transportation to the Metropolitan Government for traffic guidance in the central business district and its gateways. These funds will be used for the design and installation of an advanced Wayfaring System to provide destination and travel information for motorists driving to and exiting from downtown Nashville. The program consists of the installation of dynamic message signs, a communications network, and additional directional and informational signs within the central business district. The Wayfaring System will be installed at the major gateways into downtown Nashville and certain arterial streets within the central business district. The department of public works will oversee the design and construction of the project and will likely contract with a consultant to design the system. There is a required local match of \$350,000.

RESOLUTION NO. RS2004-593 (NEIGHBORS & SHULMAN) – This resolution approves a grant in the amount of \$525,000 from the state department of transportation to the Metropolitan Government for emergency vehicle preemption and transit priority at signalized intersections. The department of public works has determined that traffic signals currently do not meet the needs of emergency vehicles and MTA buses. These funds will be used to equip certain traffic signals with a device that will allow emergency and transit vehicles to alter the normal sequence of the signal so that the (continued on next page)

RESOLUTION NO. RS2004-593 (continued)

vehicle can move through the intersection with a green light. This will prevent emergency vehicles from having to maneuver through red lights and clogged intersections, which will result in faster response times. \$75,000 of these funds will be used for engineering, with the remaining \$450,000 for the purchase and installation of equipment. There is no required local match for this grant.

RESOLUTION NO. RS2004-594 (NEIGHBORS & SHULMAN) – This resolution approves a grant in the amount of \$560,000 from the state department of transportation to the Metropolitan Government for arterial traffic signal communications. Approximately 60% of all traffic signals in Davidson County are currently interconnected. This allows traffic engineers to better analyze traffic operations and implement changes on an as needed basis. These funds will be used to provide communication links to a number of the remaining signalized intersections that have no communication capabilities. There is a required \$140,000 local match for this grant.

RESOLUTION NO. RS2004-595 (NEIGHBORS & SHULMAN) – This resolution approves a grant in the amount of \$480,000 for the purchase and installation of illuminated street signs. These new signs will be illuminated using incandescent bulbs or LED technology, and will also use a larger font for the street name. These signs will be installed along high volume corridors and areas with significant tourist visitation to provide high visibility guidance to motorists who may be unfamiliar with Nashville’s road system. There is a required local match of \$120,000 for this grant.

RESOLUTION NO. RS2004-596 (NEIGHBORS & SHULMAN) – This resolution approves a grant in the amount of \$1,060,000 for an arterial closed circuit television surveillance and ITS communications deployment program. This program will include the installation of multiple communication backbones along a number of arterial corridors such as Murfreesboro Pike, Hillsboro Pike, Nolensville Pike, Charlotte Pike, Lebanon Pike, Dickerson Pike, and Donelson Pike. The total estimated project cost is \$1,325,000, with the state paying \$1,060,000 and Metro paying the remaining \$265,000.

RESOLUTION NO. RS2004-598 (NEIGHBORS) – This resolution authorizes the department of law to compromise and settle the claim of Margaret Burke against the Metropolitan Government for the amount of \$16,571.54, and to compromise and settle the claim of Hartford Insurance Company in the amount of \$10,897.30, for a total settlement of \$27,468.84. On March 26, 2004, a Metro General Hospital employee was traveling west on I-24 in the center lane on the way to pick up supplies for the hospital. The employee supposedly swerved to avoid an unidentified car in the left lane and struck Ms. Burke’s vehicle, forcing her car and the U-Haul trailer she was pulling into the guardrail. Ms. Burke sustained injuries to her neck, back, and abdomen. The vehicle Ms. Burke was driving and the contents of the trailer were a total loss, resulting in property damage totaling \$10,500.51. Ms. Burke incurred medical bills totaling \$12,593.36.

This resolution settles Ms. Burke’s claim in the amount of \$16,571.54. This amount consists of \$2,833.90 in property damage, \$9,362.67 in personal injuries, and \$4,374.97 in additional expenses, such as car rental, lodging, food, and transportation. This resolution also settles Hartford Insurance Company’s claim in the amount of \$10,897.30 for medical and property damage payments it made to Ms. Burke. The total settlement of \$27,468.84 is to be paid from the self-insured liability fund.

There was no disciplinary action taken against the Metropolitan Government employee involved in this accident.

RESOLUTION NO. RS2004-599 (NEIGHBORS) – This resolution compromises and settles the claim of Shirley Conner against the Metropolitan Government for the amount of \$8,200.00. On December 1, 2003, the driver of a Metro action commission bus failed to yield the right-of-way to a vehicle driven by Ms. Conner at the intersection of 12th Avenue South and Paris Avenue. Ms. Conner suffered soft tissue injuries to her chest and back and incurred medical bills totaling \$3,815.50. This resolution

reimburses Ms. Conner for her medical bills and provides \$4,384.50 for pain and suffering. This amount is to be paid from the self-insured liability fund.

The driver of the Metro action commission bus was suspended for one day and given two points on his driving record.

RESOLUTION NO. RS2004-600 (NEIGHBORS) – This resolution compromises and settles the claim of George Jackson against the Metropolitan Government for the amount of \$7,500.00. On March 19, 2004, a Metropolitan police officer was traveling north on Main Street when the officer attempted a left turn across the two south lanes of Main Street in response to a call for back up at a business on Main Street. Mr. Jackson was traveling south in the left lane on Main Street when the officer struck the left front fender of Mr. Jackson’s GMC Jimmy. Mr. Jackson sustained a strained neck, back, and ankle as a result of the collision, incurring medical bills totaling \$3,705.00. This resolution reimburses Mr. Jackson for his medical bills and provides \$3,795.00 for pain and suffering. This amount is to be paid from the self-insured liability fund. Mr. Jackson’s property damage claim has already been paid.

The Metro police officer involved in this accident was given a written reprimand.

RESOLUTION NO. RS2004-601 (NEIGHBORS) – This resolution settles the lawsuit brought by Wilson Concord, L.P. and Toll Brothers, Inc., against the Metropolitan Government, resulting in a payment to Metro in the amount of \$55,000. In 1998, a planned unit development was approved for the Brentwood Chase subdivision, near Granberry Elementary School. Once the PUD was built out in April 2003, Wilson Concord, L.P. and Toll Brothers, Inc. began construction of a portion of the Hill Creek Road sidewalk. Metro public works ordered that the sidewalk work cease since the sidewalk was not being build with the required curb and gutter section. The plaintiffs filed suit seeking a declaratory judgment to be able to build the sidewalks without the required curb and gutter. Public works then completed the sidewalks and extended it further than what would have been required of the plaintiffs for the benefit of pedestrians going to and from Granberry Elementary School.

This settlement consists of a reimbursement to Metro in the amount of \$55,000 for Wilson Concord, L.P.’s and Toll Brothers, Inc.’s portion of the sidewalk construction completed by Metro public works in front of the Brentwood Chase subdivision.

RESOLUTION NO. RS2004-602 (NEIGHBORS & LORING) – This resolution authorizes the mayor to enter into a supplemental licensing agreement with Nashville and Eastern Railroad Corporation to increase the rental fee paid for the sewer line in the railroad right-of way at M.P. 3.2. The original license agreement, approved by the council and executed in 1989, provided that Metro would pay \$78.50 annually for the license. This resolution increases the rental fee to \$83.21, to be adjusted every three years hereafter based upon the consumer price index. This rental cost is paid from the water and sewer operation and maintenance fund.

RESOLUTION NO. RS2004-603 (JAMESON) – This resolution authorizes JRS Investments, Inc., to construct and maintain a 10-square-foot sign, to project 17 feet nine inches above the public sidewalk at 104 Fourth Avenue South. JRS Investments, Inc., has agreed to indemnify the Metropolitan Government for any claims arising from the installation or maintenance of the sign, and will be required to furnish a certificate of public liability insurance in the amount of \$300,000 naming Metro as an insured party.

This resolution has been approved by the planning commission.

p:resol

- BILLS ON SECOND READING -

ORDINANCE NO. BL2004-409 (SHULMAN) – This zoning text change amends the Code to provide for the waiver of application fees for certain rezonings initiated by the planning commission and members of Council. The Zoning Code currently provides that fees for processing zoning applications shall be waived for any large area rezonings initiated by the planning commission or the Council that further the general plan. The department of law has recently interpreted this provision to mean that only the Council as a whole, not an individual member of Council, may initiate a zoning application in order to have the fee waived. In addition, the current language in the code does not define “large area.” This has caused some confusion in the past since it is sometimes unclear whether a proposed zone change qualifies as a “large area rezoning”.

This ordinance would provide that the zoning application fee may be waived for any rezoning of fifty or more parcels introduced by the planning commission to implement the general plan. This ordinance would also add a new provision to the Code that would allow a waiver of zoning application fees for any rezoning request of fifty or more parcels introduced by individual members of Council for the purpose of rezoning the property to a single-family (RS) district, or for the purpose of applying the urban design overlay district, historic preservation district, neighborhood conservation district, or urban zoning overlay district.

The planning commission deferred this zoning text change to its November 11, 2004 meeting. Section 18.02 of the Metropolitan Charter provides that no zoning ordinance may be approved by the Council on second reading unless the planning commission has made a recommendation or 30 days have elapsed since the referral of the ordinance to the planning commission. This ordinance was referred to the planning commission on October 5, 2004. Thus, the 30 days have elapsed since the referral of this ordinance to the planning commission effectively resulting in an approval of the ordinance by the commission.

ORDINANCE NO. BL2004-410 (WALLACE) – This zoning text change would require that all court proceedings associated with violations of the zoning code be resolved before the board of zoning appeals can hold a public hearing upon a variance application for relief from the violation. Under the current law, the zoning administrator has the responsibility for citing property owners found to be in violation of the zoning code. Those in violation of the code may be assessed a fine and/or ordered to take corrective action to remedy the violation. This corrective action often would result in a substantial cost to the property owner. For example, if a property owner builds a structure that slightly encroaches into a required setback, the only way to remedy the violation may be to demolish the structure and start over. The code also allows the zoning administrator to impose triple fees for a zoning permit whenever work has commenced without a permit.

Instead of going to the substantial expense of remedying a violation, violators will often seek a variance from the board of zoning appeals to approve the condition that resulted in the citation. If the variance is granted, then the associated court proceedings are dismissed. This ordinance would require that all court proceedings be resolved on the front end before obtaining a variance.

Adoption of this requirement could delay resolution of zoning violations for many years.

This ordinance has been disapproved by the planning commission.

ORDINANCE NO. BL2004-413 (GILMORE & SHULMAN) – This ordinance establishes the property tax relief program for low-income elderly residents of the Metropolitan Government for fiscal year 2004-2005. State law allows county legislative bodies to appropriate funds for such programs and establish guidelines for participation in the program and the disbursement of such funds. The Council appropriated \$700,000 in the current fiscal year's operating budget for a property tax relief program for the elderly. This ordinance authorizes the Metropolitan trustee to establish rules and procedures for implementation of the program and directs the trustee to disburse the funds accordingly to all eligible taxpayers. All persons who qualify for the state property tax relief program and whose income does not exceed \$12,710 annually will qualify for this program. As this budgetary appropriation is non-recurring funding, this program will expire on June 30, 2005.

ORDINANCE NO. BL2004-414 (TUCKER) – This ordinance amends the Metropolitan procurement code to prevent businesses performing auditing or consultant services for the Metropolitan Government from bidding on contracts involving the implementation of the audit recommendations for a period of five years. Under the procurement code, contracts for goods and most services purchased by the Metropolitan Government are awarded based on competitive sealed bids. The code provides that certain professional services may be exempted from the requirements of centralized purchasing. In the past, various firms providing auditing and consulting services to Metro have bid on contracts pertaining to certain aspects of the implementation of the firm's recommendations. Such consultants have provided financial advisory services, investment advisory services, medical consulting services, architectural and engineering services, and legal services. This ordinance would make auditing and consulting firms ineligible to bid on contracts related to their recommendations for a period of five years from the date of making the recommendations.

The finance department has indicated that this ordinance would result in higher costs to the Metropolitan Government for necessary services and would diminish the government's capacity to improve efficiency.

There is a housekeeping amendment for this ordinance that corrects a typographical error.

ORDINANCE NO. BL2004-415 (TUCKER & SHULMAN) – This ordinance abandons an existing 8" sewer line and 20' drainage easement at the Bellshire Walgreen's property located in the vicinity of the Old Hickory Boulevard and Dickerson Road intersection. The department of water and sewerage services is no longer using the sewer line and easement. A private sewer line of equal size will replace the existing 8" line. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2004-416 (ISABEL & SHULMAN) – This ordinance authorizes the director of public property administration to acquire utility easements by negotiation or condemnation for the purpose of constructing water and sewer improvements. Easements are to be acquired for property located at 3138 and 3140 Lakespur Drive. The cost of the easements to be acquired will be paid from the water and sewer extension and replacement fund. The ordinance provides that the acquisition of additional easements for this project may be approved by resolution of the Council. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2004-417 (SHULMAN & NEIGHBORS) – This ordinance authorizes the Metropolitan Government to enter into a participation agreement with M2H Group to improve the public water service to property located at 807 18th Avenue North. The water improvements will consist of the replacement of an existing 6” water main with a new 8” water main extending along 18th Avenue North and Division Street. M2H has agreed to deposit \$30,000 in lieu of construction for the water main replacement. Amendments to this participation agreement may be approved by resolution of the Council.

ORDINANCE NO. BL2004-418 (SHULMAN) – This ordinance approves an agreement between the Metropolitan Government and CSX Transportation, Inc., for the reconstruction of the Polk Avenue bridge over the CSX railroad tracks. Pursuant to this agreement, Metro will reimburse CSX for certain expenses it incurs related to the interference with CSX’s property in the course of repairing the Polk Avenue overpass bridge. The expenses to be reimbursed include engineering and inspection services, changes in CSX communication and signal lines, and flagging services. The contract provides that Metro agrees to indemnify CSX to the extent allowed by law for any damages resulting from the bridge reconstruction project. The agreement further provides that Metro will require its contractors to purchase a \$5 million insurance policy naming CSX as additional insured. The cost of the reimbursement to CSX is estimated to be \$61,986.

ORDINANCE NO. BL2004-419 (WILHOITE) – This ordinance authorizes the director of public property administration to accept an easement for use as part of the Metro greenway system. The easement is being donated by Marshall Carr, Trustee, for property located near Richards Road in the Antioch area. The property subject to the easement may only be used for greenway purposes, including a pedestrian path, bike path, nature trail, or natural area.

This ordinance has been referred to the planning commission and the board of parks and recreation.

ORDINANCE NO. BL2004-420 (COLEMAN) – This ordinance readopts the Code of the Metropolitan Government to include all ordinances enacted on or before August 17, 2004.

ORDINANCE NO. BL2004-421 (COLE) – This ordinance amends the Metropolitan Code of Laws to provide reporting requirements for nonprofit organizations receiving grants from the Metropolitan Government. State law requires that all organizations desiring financial assistance from the Metropolitan Government submit “a copy of an annual audit”, but this state law provision does not define the term “audit”. As a result, there has been some confusion as to the type of financial information that nonprofit organizations must submit in order to receive grants from the Metropolitan Government. The finance department has in the past been willing to accept other information in lieu of an audit, such as a copy of a tax return, for some start-up nonprofit entities. However, the department of law has recently interpreted the state law provision in question to require that such nonprofit entities file an annual audit with the Metropolitan Clerk before obtaining governmental funding. The legal opinion issued by a Metropolitan Attorney quotes a Tennessee Supreme Court case in which the Court states that “an audit, as the term is commonly use, is ... the methodical examination of records with intent to verify the accuracy.” A Tennessee Attorney General opinion from 1991 states that although an audit is required, the audit does not have to be prepared by an independent accountant. The Attorney General opinion further provides that the local legislative body can adopt regulations to clarify the type of audit required.

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ORDINANCE NO. BL2004-421 (continued)

In an effort to clarify the type of information required, this ordinance amends the Code to include a specific list of information that must be submitted to the Metropolitan Government prior to the disbursement of any grant funds to nonprofit organizations. This ordinance is modeled after a law currently in place in Knoxville, Tennessee.

Pursuant to this ordinance, all nonprofit organizations would be required to submit the following information:

- A copy of its corporate charter or other articles, constitution, bylaws, or instruments of organization.
- A copy of a letter from the Internal Revenue Service evidencing the fact that the organization is a nonprofit, tax-exempt organization.
- A statement of the nature and extent of the organization's program that serves the residents of the metropolitan government.
- The proposed use of the funds to be provided by the metropolitan government.
- The proposed budget of the organization.
- A copy of the organization's audit for the most recent fiscal year. The ordinance defines the term "audit" as "a formal examination of the organization's accounting records and financial situation in accordance with the generally accepted auditing standards issued by the American Institute of Certified Public Accountants."

This ordinance expressly exempts nonprofit civic and charitable organizations receiving grants from the arts commission, as these appropriations are governed by another specific code section.

ORDINANCE NO. BL2004-422 (BRADLEY, WILHOITE & TUCKER) – This ordinance renames a 1,150-foot section of Anderson Road as "Old Anderson Road". This section of roadway to be renamed is between New Smith Springs Road and the other fork of Anderson Road. This street rename will enhance emergency response to the area.

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

ORDINANCE NO. BL2004-423 (WALLACE, SHULMAN & NEIGHBORS) – This ordinance approves a contract between the Metropolitan Government and the state department of transportation for reevaluation of the environmental impact statement for the portion of the Shelby Street/Demonbreun Street corridor from 4th Avenue South to I-40 West. Pursuant to the contract, Metro will provide twenty percent of the project costs, and the remaining eighty percent will be provided from federal funds. In the event the use of the federal funds for this project is ruled ineligible by the federal highway administration, then Metro will be responsible for the entire \$937,500 project cost.

- BILLS ON THIRD READING -

ORDINANCE NO. BL2004-352 (COLEMAN) – This ordinance amends the Metropolitan Code of Laws to require all Metro departments, boards, and commissions to develop a Title VI implementation plan and to submit annual compliance reports. Title VI of the Civil Rights Act of 1964 prohibits organizations and agencies that receive federal funds from discriminating on the basis of race, color, or national origin. Since The Metropolitan Government receives federal funding for various government programs, Metro must comply with the provisions of Title VI. This ordinance would require each Metro department, board, commission, and agency to develop a Title VI implementation plan. The ordinance further would require such departments, boards, commissions, and agencies to submit annual compliance reports and implementation plan updates to the director of personnel at the end of every fiscal year. The annual report is to be distributed to the mayor and to each member of council. The ordinance provides that federal funds should be used to the extent legally available to cover any increased costs incurred by departments, boards, and commissions in developing the plan and preparing the report.

ORDINANCE NO. BL2004-370 (FOSTER, NEIGHBORS & GILMORE) – This ordinance authorizes the director of public property administration to acquire property located on Cotton Lane, by negotiation or condemnation, for the construction of a new Head Start center in the Nolensville Road area for the benefit of the Metro action commission. The property consists of 5.46 acres and has an appraised value of \$72,600. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2004-371 (GOTTO, WHITE & OTHERS) – This zoning text change would exempt residential property from the zoning code’s requirements that a tree removal permit be obtained prior to the removal of any tree on the property. The zoning code was recently amended to require that a tree removal permit issued by the zoning administration be obtained by all persons or businesses engaged in tree removal services on commercial and/or residential property. The recent amendment to the code also requires that a plan of disposal be submitted for each tree. Thus, under the current zoning code, a homeowner would be required to obtain a tree removal permit and submit a plan of disposal before cutting down a diseased or storm-damaged tree on his/her own property. This could potentially expose residential property owners to tort liability, since Tennessee courts have held that property owners are liable for damages caused by a known damaged or diseased tree on their property.

This ordinance would exempt owners of residential property and commercial tree services doing work on residential property from the permit and plan of disposal requirements. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2004-379 (HART) – This ordinance abandons 172 linear feet of an existing sewer line easement encumbering property located at 3500 Gallatin Pike. Teacher’s Retirement System is the owner of the property encumbered by the easement. The department of water and sewerage services no longer has a need for this sewer easement. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2004-380 (ISABEL) – This ordinance authorizes the director of public property administration to acquire easements and right-of-way, by negotiation or condemnation, in connection with the Simpkins Street sidewalk improvement project. The improvements to be made along Simpkins Street include new curbs and gutters, a grass strip, and the construction of sidewalks. Property interests are to be acquired for 1700 to 1728 Simpkins Street, as well as 2116 and 2120 24th Avenue North. The acquisition of additional property interests for this project may be approved by resolution of the Council receiving 21 affirmative votes.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2004-381 (SHULMAN & NEIGHBORS) – This ordinance authorizes the director of the department of water and sewerage services to enter into agreements with the state department of environment and conservation to allow for local approval of water and wastewater engineering plans. Under state law, the department of environment and conservation is responsible for the general supervision over the construction of public water supplies and public sewerage systems, including the approval of construction or modifications to any such system. However, state law does enable local governments to grant approval of water and wastewater construction plans upon certification by the commissioner of the department of environment and conservation.

The agreements provided in this ordinance grant Metro water services the authority to approve wastewater and public water plans, subject to certain conditions. The standards used by Metro water services for review and approval of the plans must be at least as stringent as those standards used by the state. Plans involving the construction of treatment plants, sludge handling facilities, and those projects funded by state or federal funds will still have to be approved by the department of environment and conservation.

This ordinance also approves a fee schedule to be used by the department of water and sewerage services for the review of construction plans. The fee schedule is as follows:

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|-----------------------------|---|
| 1. Pump Stations | \$300.00 each |
| 2. Standard Specifications | \$100.00 |
| 3. Water and Sewer Lines | \$100.00 for first 1,000 feet, and
\$0.01 per foot over 1,000 feet |
| 4. Plan Modification | 20% of the review fee |
| 5. Reports, Addendums, etc. | \$100.00 each |

Future amendments to these agreements may be approved by resolution of the Council.

ORDINANCE NO. BL2004-382 (SHULMAN & NEIGHBORS) – This ordinance grants the power to the department of public works to administer Metro’s participation in the Tennessee fast track industrial development program (FIDP). The FIDP, formerly known as the Tennessee industrial infrastructure program (TIF), is a state program in which the Metropolitan Government, the Greater Nashville Regional Council, and private businesses participate for grant funds to make infrastructure improvements. These funds are made available to industries that create new jobs either by expansion or building new facilities. Metro has participated in this program since 1993. The industrial development board and the mayor’s office of economic development have previously managed and administered Metro’s participation in this program. This ordinance would transfer this responsibility to the department of public works.

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ORDINANCE NO. BL2004-382 (continued)

This ordinance further provides that all contracts and grants relating to Metro's participation in this program may be approved by resolution of the Council receiving 21 affirmative votes.

The council office is of the opinion that this program should be administered by the office of economic development. This program is directed at economic development, not general public infrastructure improvements.

ORDINANCE NO. BL2004-383 (CRADDOCK & SHULMAN) – This ordinance authorizes the mayor to execute a contract in lieu of a performance bond with the state department of environment and conservation regarding the old Due West landfill. The Due West dump site was formerly used by the Metropolitan Government as a landfill, but has been closed for many years. State law requires that all owners of closed landfills either put up a performance bond or execute a contract agreeing to pay a penalty if the site is not adequately maintained.

This ordinance approves a contract between Metro and the state whereby Metro agrees to perform all operation and maintenance requirements regarding the old Due West landfill, or pay a penalty in the amount of \$2,091,024. This landfill site has been adequately cleaned up and capped, and there are currently no known environmental problems with the site. This agreement simply provides that Metro will continue to maintain the site and monitor for environmental hazards such as the release of methane gas. Metro would only be subject to the penalty if it failed to adequately maintain the site.

p:billstrd