

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director
Metropolitan Council Office

DATE: **August 16, 2011**

RE: **Analysis Report**

Balances As Of:	<u>8/10/11</u>	<u>8/11/10</u>
<u>GSD 4% RESERVE FUND</u>	*\$35,464,195	\$36,231,254
<u>GENERAL FUND UNDESIGNATED FUND BALANCE</u>		
GSD	Unavailable	Unavailable
USD	Unavailable	Unavailable
<u>GENERAL PURPOSE SCHOOL FUND UNRESERVED FUND BALANCE</u>		
	Unavailable	Unavailable

* Assumes estimated revenues in fiscal year 2012 in the amount of \$24,098,500

– RESOLUTIONS –

RESOLUTION NO. RS2011-1782 (BARRY & MAYNARD) – This resolution repeals Resolution No. RS2011-1707 for the purpose of rescinding the council's approval of a grant agreement between the Metropolitan Government, the Industrial Development Board (IDB), MDHA and IQT, Inc. In June 2011, the council approved an economic development incentive grant in an amount not to exceed \$1,610,000 for the benefit of IQT, which had proposed to relocate its U.S. headquarters and open an operations center in Nashville. In July 2011, IQT suddenly closed two call centers in Canada causing 1,200 employees to lose their jobs without notice. Several days following this action, the mayor's office announced that it no longer intended to provide the incentives to IQT.

The grant agreement has not been approved by the IDB, and no documents have been signed by either of the parties. The council office recommended that a resolution be filed rescinding the council's approval of the agreement.

RESOLUTION NO. RS2011-1783 (BARRY) – This resolution accepts an annual grant in the amount of \$29,630 from the Tennessee Arts Commission to the Metropolitan Arts Commission. These funds will be used to make grants to nonprofit organizations for community arts projects. There is a required local match in the amount of \$29,630 to be provided from the Metro arts commission budget. The term of the grant is from August 1, 2011 to June 30, 2012.

RESOLUTION NO. RS2011-1784 (FORKUM & BARRY) – This resolution approves a grant in the amount of \$90,000 from the Greater Nashville Regional Council to the Metropolitan social services commission to provide personal care and homemaker services. These funds are used to assist persons who are homebound or unable to perform at least one instrumental activity of daily living. The grant funds will be allocated as follows:

- \$63,000 to assist homebound persons with routine household activities, including meal planning, light housekeeping, and shopping.
- \$27,000 for personal care assistance such as bathing, dressing, personal hygiene activities, and eating.

The term of this grant is from July 1, 2011 through June 30, 2012. The department of social services will be compensated for the above services at a rate of \$20.52 per hour for personal care services and \$20.44 per hour for homemaker services.

RESOLUTION NO. RS2011-1785 (FORKUM & BARRY) – This resolution approves a contract between the board of health and Meharry Medical College to provide a physician or resident physician to staff a mobile clinic to provide obstetrical and pediatric medical care to participants enrolled in the Music City Healthy Start program. The healthy start program is a federal program that provides services to eligible pregnant and parenting women regarding child health. The mobile clinic will be held at the Hadley Park community center either weekly or biweekly. The term of this contract is from April 1, 2011 through June 1, 2012. There is no compensation associated with the performance of this contract.

RESOLUTION NO. RS2011-1786 (FORKUM) – This resolution approves a contract between the Metropolitan board of health and Benedictine University located in Lisle, Illinois to provide internship opportunities for students. The health department will provide internship opportunities for students seeking a master's degree in public health. There is no compensation associated with this contract. The term of this contract is from July 5, 2011, through July 4, 2012.

Metro participates with a number of colleges and universities to provide clinical experience to students.

RESOLUTION NO. RS2011-1787 (FORKUM) – This resolution approves amendment three to a contract between the Metropolitan board of health and Vanderbilt University for the health department's participation in the Tuberculosis Trials Consortium. Vanderbilt received a grant from the U.S. Centers for Disease Control and Prevention, through the U.S. Veteran Affairs Medical Centers, for this tuberculosis project. The health department's responsibilities under this contract are to provide space and equipment for the project, as well as consultation and support services.

This amendment extends the contract term an additional year commencing July 1, 2011.

RESOLUTION NO. RS2011-1788 (BARRY, TOLER & FORKUM) – This resolution authorizes the Metropolitan employee benefit board to implement an incentive program for Metro employees and their dependents enrolled in the self-insured medical plans to utilize the healthcare centers operated by Metropolitan Nashville Public Schools (MNPS). Metro currently offers two self-insured health insurance options for Metro employees: the Blue Cross/Blue Shield PPO and the Cigna Choice Fund account-based plan. This resolution would allow Metro employees and their dependents to use the MNPS healthcare centers without paying the copays and coinsurance that would otherwise be applicable. This incentive program has been approved by the employee benefit board.

A similar resolution was approved in 2008 providing an employee incentive for medical services provided at the Metropolitan hospital authority facilities.

RESOLUTION NOS. RS2011-1789 and RS2011-1790 (BARRY) – These two resolutions approve grants from the state department of labor and workforce development to the Nashville career advancement center (NCAC) to prepare adults and dislocated workers for re-entry into the labor force, and to provide training for those facing serious barriers to productive employment. These grants provide part of the operating funding for the NCAC. The terms of the grants are from July 1, 2011, through June 30, 2013.

Resolution No. RS2011-1789 approves a grant in the amount of \$156,998 to establish programs and deliver services to adult workers.

Resolution No. RS2011-1790 approves a grant in the amount of \$582,683 to establish programs and deliver services to dislocated workers.

RESOLUTION NO. RS2011-1791 (BARRY) – This resolution approves a cooperative agreement between the department of water and sewerage services and the U.S. department of interior – geological survey for the installation of backup radio modems for flood warning gauges and webcams in various streams in Davidson County. Metro water services will be responsible for paying \$35,256 for the installation of the devices. Metro already has a contract with the U.S. department of interior to provide stream flow monitoring at six sites and continuous water-quality monitors at four sites within the area of the Metropolitan Government. The term of the contract is from September 1, 2011, through November 30, 2012.

RESOLUTION NO. RS2011-1792 (BARRY) – This resolution approves an application for a grant in the amount of \$4,612.99 from the Memorial Foundation to the Davidson County sheriff's department, to build outdoor shelters for animals. This grant is to support the sheriff's office PAWS program, which teaches inmates to train and care for animals.

RESOLUTION NO. RS2011-1793 (LANGSTER & BARRY) – This resolution approves a grant in the amount of \$5,000 from the Memorial Foundation to the Davidson County sheriff's department to build outdoor shelters for animals and a work shed in collaboration with the Metro animal control center. This grant is to support the sheriff's office PAWS program.

RESOLUTION NO. RS2011-1794 (LANGSTER & BARRY) – This resolution approves an annual grant in the amount of \$180,987 from the state department of transportation to the Davidson County sheriff's office for litter and trash pick-up along roads and highways, and litter prevention education. These grant funds will be used to fund the administration of a continuing program to use misdemeanor offenders under the custody of the sheriff's office to pick up roadside litter. The grant budget provides that \$54,200 of the funds will be used for litter prevention and recycling education programs. The term of the grant is from July 1, 2011 through June 30, 2012.

RESOLUTION NO. RS2011-1795 (LANGSTER & BARRY) – This resolution approves a grant in the amount of \$25,000 from the Public Defender Corps (PDC) to the Davidson County public defender's office to serve as a host site for a national fellowship program. Although referred to as a grant in the resolution, this is really a memorandum of agreement among the public defender's office, Equal Justice Works and the Southern Public Defender Training Center (SPDTC). The public defender's office will employ at least one recent law school graduate as a "fellow" for three years. Further, the public defender agrees to select one qualified lawyer to join the SPDTC class of 2011. Metro will be responsible for paying \$5,000 for the three-year SPDTC training.

The SPDTC will provide up to \$25,000 to partially defray the cost of employing one fellow for the first year of the three-year fellowship. The public defender's office will be responsible for covering the remainder of the salary and benefits for the first year, and all of the salary and benefits for the second and third year.

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RESOLUTION NO. RS2011-1795 (continued)

The council office is of the opinion that this agreement should technically be approved by ordinance as opposed to resolution. Although grants may be approved by resolution, this agreement is not really a grant. While the SPDTC will be contributing \$25,000 toward the salary of the fellow, the agreement imposes a number of conditions upon Metro that are not typically a part of grant agreements. In fact, the word "grant" is not used anywhere in the agreement. In addition, the resolution purportedly approves an agreement with the "Public Defender Corps Fellowship", although this is not one of the entities listed as a party to the actual agreement.

If approval of this agreement at the August 16th meeting is necessary for the implementation of the fellowship program, the council office suggests that an ordinance be filed at the beginning of the next council term to ratify the agreement. In any event, this resolution should be substituted to include the correct name of the organization and to appropriate the funds to the public defender instead of the juvenile court, as the resolution currently provides.

RESOLUTION NO. RS2011-1796 (RYMAN & LANGSTER) – This resolution approves an amendment to an interlocal mutual aid agreement between the Metropolitan fire department and the City of Goodlettsville fire department for mutual firefighting, rescue, and first responder EMS assistance. In 2001, the council approved an agreement with the City of Goodlettsville whereby each city fire department agreed to respond in case of an emergency within the portion of Goodlettsville located in Davidson County. Metro has similar agreements with other neighboring fire departments.

This resolution approves an amendment to the agreement to provide fire suppression and dispatch units to any portion of Goodlettsville's city limits, whether in Davidson County or Sumner County. This will result in the automatic dispatch of fire department resources from one jurisdiction to another without advanced permission from the other jurisdiction. This amendment is projected to have a minimal impact on the Metro fire department.

RESOLUTION NO. RS2011-1797 (LANGSTER & BARRY) – This resolution approves an intergovernmental agreement between the U.S. drug enforcement administration (DEA) and the Metropolitan police department for assistance with the Middle Tennessee drug enforcement task force. The purpose of the drug enforcement task force is to gather intelligence data and conduct undercover operations related to illegal drug trafficking. Pursuant to this agreement, the police department will assign one officer to the task force. The DEA will assign three special agents to the task force, and will provide the necessary funds and equipment to support the activities of the task force. The DEA agrees to reimburse the police department up to \$17,202.25 for overtime paid to the Metro officer participating in the drug enforcement task force. The term of this grant is from the date of its execution through September 30, 2012.

State law allows the Metropolitan Government to enter into intergovernmental agreements with federal agencies with approval of the council by resolution. Similar agreements with the DEA for overtime reimbursement have been approved by the council in recent years.

RESOLUTION NO. RS2011-1798 (JAMESON, MAYNARD & BARRY) – This resolution approves a grant in the amount of \$20,000 from the Metropolitan development and housing agency (MDHA) to the Metropolitan board of parks and recreation for summer enrichment programs for youth. MDHA has funding available for these activities as part of the federal community development block grant program. These funds are to cover the costs associated with recreational, educational, social, and cultural art activities provided to youth in the Kirkpatrick neighborhood between June 1 and August 15, 2011. There is a required in-kind match of \$34,800.

RESOLUTION NO. RS2011-1799 (MAYNARD & BARRY) – This resolution approves a grant in the amount of \$5,700 from the state arts commission to the Metropolitan board of parks and recreation to supplement the Big Band dance program in Centennial Park. This program provides free big band dances to the public. The parks department will use this funding for the purpose of continuing the dance program this year. There is a required local in-kind match of \$5,700 to be provided by the parks department.

RESOLUTION NO. RS2011-1800 (GILMORE, MAYNARD & BARRY) – This resolution approves a grant in the amount of \$110,000 from the Tennessee department of labor and workforce development to the Nashville career advancement center for continuing support of the Music City workforce development program's off-site location facilitated by the Jefferson Street United Merchants Partnership (JUMP). These funds will be used to cover staff salaries and operating costs for the off-site program. The Music City Center requested this grant funding to assist in connecting unemployed construction workers with the necessary training, certification, and employment as part of the construction of the Music City Center. The term of the grant is from July 20, 2011 through June 30, 2012.

RESOLUTION NO. RS2011-1801 (MAYNARD & BARRY) – This resolution approves an amendment to a grant from the Friends of Warner Park to the Metropolitan parks department to provide staffing for the Warner Parks Center and Nature Center, the Waterer Program, and the SWEAT Program for additional labor for summer maintenance. This amendment increases the grant agreement by \$622.50, with a corresponding increase of \$143.59 for the in-kind local match.

RESOLUTION NO. RS2011-1802 (BARRY & HODGE) – This resolution approves a cooperative agreement between the Metropolitan Government and the U.S. department of agriculture for a stream bank stabilization project along Whites Creek. The total cost of the project is estimated to be \$28,900. The federal government will provide \$21,675 toward the cost of the project plus \$1,000 for technical assistance. Metro will be responsible for the remainder of the project cost. All work is to be completed by October 15, 2011.

RESOLUTION NO. RS2011-1803 (GILMORE) – This resolution authorizes Jefferson Street Lofts LP., d/b/a Germantown Place, to install and maintain an aerial sign encroachment at 310 Jefferson Street. This sign is to encroach twelve inches into the right-of-way at a height of 25 feet above the sidewalk. The applicant has agreed to indemnify the Metropolitan Government from all claims in connection with the construction and maintenance of the encroachment, and is required to post a \$1 million certificate of public liability insurance with the Metropolitan clerk naming the Metropolitan Government as an insured party.

RESOLUTION NO. RS2011-1804 (LANGSTER) – This resolution authorizes 2020 West End Group Associates, GP, d/b/a Five Guys, to install and maintain an aerial sign encroachment at 2016 West End Avenue. This double-faced sign, measuring approximately 9 feet tall by 2 ½ feet wide, is to encroach three feet into the right-of-way. The sign will be illuminated with neon and LED lights. The applicant has agreed to indemnify the Metropolitan Government from all claims in connection with the construction and maintenance of the encroachment, and is required to post a \$1 million certificate of public liability insurance with the Metropolitan clerk naming the Metropolitan Government as an insured party.

RESOLUTION NO. RS2011-1805 (JAMESON) – This resolution authorizes Papa Russell, Inc., d/b/a The National Underground, to install and maintain an aerial sign encroachment at 105 Broadway. This double-faced neon sign will be twelve feet tall and 4 feet – 8 inches wide. The applicant has agreed to indemnify the Metropolitan Government from all claims in connection with the construction and maintenance of the encroachment, and is required to post a \$1 million certificate of public liability insurance with the Metropolitan clerk naming the Metropolitan Government as an insured party.

RESOLUTION NO. RS2011-1806 (PAGE & MOORE) – This resolution authorizes Nashville Data Link, Inc., to install and maintain 1.2 miles of fiber optic cable within the public right-of-way along 4th Avenue South, Nolensville Pike, Rains Avenue, Herron Drive and Interstate Boulevard South. The applicant has agreed to indemnify the Metropolitan Government from all claims in connection with the construction and maintenance of the encroachment, and is required to post a \$1 million certificate of public liability insurance with the Metropolitan clerk naming the Metropolitan Government as an insured party. Nashville Data Link, Inc. is to pay all costs related to the construction and maintenance of the cable. The plans and specifications for the cable must be submitted to and approved by the director of public works. The mayor and the council reserve the right to repeal this resolution at any time, and Nashville Data Link, Inc. would be required to remove the cable at its own expense.

There will likely be a late resolution offered on August 16th to approve an additional aerial encroachment for Nashville Data Link that was inadvertently omitted by public works.

RESOLUTION NO. RS2011-1807 (BARRY) – This resolution authorizes the department of law to compromise and settle the claims of Nora Davis, Debra Tuders, Ben Upton, and Elizabeth Upton against the Metropolitan Government for a total amount of \$195,000. On June 8, 2009, a Metro public library employee was driving a Metro vehicle on Gallatin Road in route to the Inglewood branch library when he rear-ended a vehicle driven by Nora Davis, causing Ms. Davis to strike the vehicle in front of her driven by Ben Upton. The Metro employee looked down at his speedometer and did not notice that traffic was stopped at the intersection of Gallatin Road and East Palestine Avenue. The Metro employee testified that he was traveling 30-35 miles per hour and did not apply his brakes before striking Ms. Davis's vehicle.

Two lawsuits were filed as a result of this accident, which have now been consolidated. Ms. Davis and her passenger, Debra Tuders, brought the first lawsuit. Ms. Davis and Ms. Tuders suffered injuries to the neck and back resulting in medical bills totaling \$24,580.49 and \$5,230.49, respectively. Mr. Upton and his wife brought the second lawsuit. Mr. Upton sustained injuries to his neck, back, and shoulder requiring corrective surgery. Mr. Upton's medical bills total \$60,404.35. His wife brought a claim for loss of consortium.

The department of law recommends settling these claims since the Metro employee was clearly at fault. The \$195,000 settlement is broken down as follows:

Nora Davis

Medical Expenses	\$24,580.49
Pain and Suffering	<u>\$40,419.51</u>
Total Settlement	\$65,000

Debra Tuders

Medical Expenses	\$5,230.49
Pain and Suffering	<u>\$9,769.51</u>
Total Settlement	\$15,000

Ben and Elizabeth Upton

Medical Expenses	\$60,404.35
Pain, Suffering, and Loss of Consortium	<u>\$54,595.65</u>
Total Settlement	\$115,000

The Metro employee involved in this accident received disciplinary action consisting of a three-day suspension and revocation of driving privileges. The employee subsequently retired to avoid disciplinary action stemming from a separate matter.

This settlement amount is to be paid out of the self-insured liability fund.

RESOLUTION NO. RS2011-1808 (BARRY) - This resolution sets a public hearing to be held at the Tuesday, October 4, 2011, council meeting relative to the proposed acquisition and financing of public infrastructure improvements and the assessment of costs against the owners of properties within the Biltmore Ridges development. This mixed-use development is located near the intersection of Interstate 40 and McCrory Lane and is to consist of retail, shopping, restaurant, office, hotels, townhomes, single and multi-family housing, and other uses. State law requires that a public hearing be held prior to Metro undertaking the improvements and issuing special assessment revenue bonds to finance the costs of the infrastructure improvements. The bonds will be paid from the funds provided from the assessments against the development property. This resolution directs the Metropolitan clerk to publish the notice of public hearing for three consecutive weeks in *The Tennessean*, as well as give written notice of the public hearing to each of the owners of property within the development.

The public hearing for this project originally scheduled for August 2, 2011 was cancelled because the necessary documents had not been finalized.

RESOLUTION NO. RS2011-1809 (ADKINS) – This resolution approves the election of certain notaries public for Davidson County. Notary resolutions are typically approved the first meeting of each odd month. However, since the council will not be meeting the first Tuesday in September, it is necessary that this resolution be approved at the August 16th meeting to prevent the notary certifications from lapsing.

– **BILLS ON THIRD READING** –

ORDINANCE NO. BL2008-351 (GOTTO) – This ordinance amends the Metro Code to set maintenance standards for railroad bridges. The code currently gives the traffic and parking commission the authority to survey all railroad crossings and to require the railroads to take corrective action to prevent accidents. The code also sets maximum speeds for trains operating within the area of the Metropolitan Government. Further, the code requires railroad bridges built over the Metro right-of-way to be constructed according to plans approved by the director of public works. However, the code includes no standards for the ongoing maintenance of railroad bridges.

This ordinance would require railroads owning and/or maintaining bridges within the area of the Metropolitan Government to keep the bridges in good structural condition and to paint all metal surfaces to inhibit rust and corrosion. All existing surfaces with rust or corrosion must be stabilized and painted to prevent future rust or corrosion.

State law requires that all ordinances affecting railroads be submitted to the commissioner of the Tennessee department of transportation, and that no such ordinance is to be effective until fifteen days after the registered agent of the railroad has been served with a copy of the ordinance.

The council office would point out that this ordinance is likely preempted by federal law. Railroads engage in interstate commerce, and as such fall within the jurisdiction of the U.S. Congress under the Commerce Clause of the United States Constitution. Further, two federal statutes expressly preempt state and local regulation of railroads in the areas of safety and rail facility operations. The state Supreme Court of South Carolina held in February 2011 that a Cayce, South Carolina ordinance requiring railroads to paint their bridges is preempted by federal law.

Given the substantial costs involved in painting railroad bridges, enactment of this ordinance would most certainly result in litigation against the Metropolitan Government.

ORDINANCE NO. BL2011-901 & BL2011-923 (COLE & TOLER) – These two ordinances amend the zoning code to add single-family cottage developments as a use permitted with conditions in certain two-family (R) zoning districts within the urban services district. Cottage developments are defined in the zoning code as single family residential developments of four to ten dwelling units arranged on small lots toward a common open space on at least two sides. These cottage developments are currently only permitted in multifamily districts, not the R and RS districts. This use was added as part of the multi-family districts in 2006, but developers have not taken advantage of it due to the density restrictions created by the bulk standards.

Ordinance No. BL2011-901, as amended, would allow single-family cottage developments in the R6, R8 and R10 two-family zoning districts along existing streets within the area of the urban services district (USD) if certain conditions are satisfied. Buildings must be 1 or 1 ½ stories with a maximum height of 25 feet. The maximum building footprint would be 1,000 (continued on next page)

ORDINANCE NO. BL2011-901 & BL2011-923 (continued)

square feet. All units must either face the street or common open space. The development must designate at least 350 square feet of common open space per unit. Further, each unit must have at least 200 square feet of contiguous private open space next to the unit for use by the homeowner.

All parking must be screened from the common open space, from all public streets, and from the properties adjacent to the cottage development. A covered front porch at least 60 square feet in size is required for all units. The ordinance also modifies the required rear setbacks under the base zoning districts to accommodate cottage development units abutting an alley.

As an incentive to developers to utilize the cottage development approach, this ordinance provides a density bonus of up to 1 ½ times the units allowed under the base zoning district, with no minimum lot size. This would allow significantly greater density on infill lots in established neighborhoods. However, the density bonus would not be available if an historic structure has been demolished on the site within the two years prior to site plan approval.

Like the specific plan (SP) district, cottage developments would be required to have a final site plan approved by the planning commission.

As of the date of this writing, 16 members of council have requested that the area within their districts be removed from this ordinance by amendment.

Ordinance No. BL2011-923 simply clarifies that the maximum number of cottage units that may surround an open space will be twelve, as opposed to ten, with a minimum of four units. A new ordinance was needed to accomplish this change due to the restrictions contained in the caption for Ordinance No. BL2011-901.

These two ordinances have been approved by the planning commission.

ORDINANCE NO. BL2011-962 (TYGARD) – This ordinance amends the Metropolitan Code provisions pertaining to the placement of signs within the right-of-way to add the department of public works as an enforcement agency. In 2009, the Council enacted Ordinance No. BL2009-433 modeled after a law in Charlotte, NC to not only make the persons that actually place the illegal signs responsible, but to make the ordinance enforceable against the business being advertised. Under the 2009 law, “responsible persons” for the placement of illegal signs include:

1. The person, business, company or other entity hosting the advertised event or selling the services/products being advertised.
2. The person or business responsible for the placement of the illegal signs.
3. The political candidate whose candidacy is supported by the sign.
4. The president of a committee for a campaign for or against a ballot measure being promoted.
5. The person, business, or company whose phone number, address, or e-mail address appears on the sign.

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ORDINANCE NO. BL2011-962 (continued)

The 2009 ordinance identified the department of codes administration as the agency that would be responsible for issuing citations for violations of the law, although the department of public works and Metro water services employees were given the express authority to remove signs found in violation of the ordinance. This ordinance would allow the public works department to actually issue citations in addition to picking up the illegal signs.

ORDINANCE NO. BL2011-963 (TYGARD) – This ordinance names the bridge on Newsom Station Road over the Harpeth River in memory of Danny Tomlinson. Mr. Tomlinson lost his life in the May 2010 flood when the vehicle he was riding in was overtaken by the Harpeth River flood waters covering Newsom Station Road. The Metropolitan Code provides that no Metropolitan Government building or structure may be named except pursuant to an ordinance enacted by the council. The council has named two other bridges in honor of persons that lost their lives in the May 2010 flood.

ORDINANCE NO. BL2011-964 (RYMAN) – This ordinance, as amended, authorizes the director of public property administration to donate the former Goodlettsville library property to the City of Goodlettsville. Since the new Goodlettsville library is now open, the Metropolitan Government has no need of the former facility located at 106 Old Brick Church Pike. This ordinance requires that the deed transferring the property include a reversionary clause specifically providing that the property will revert to Metro if it ceases to be used for a public purpose benefitting the citizens of the City of Goodlettsville.

ORDINANCE NO. BL2011-965 (BARRY & HODGE) – This ordinance approves an agreement between the Metropolitan Government and Creative Outdoor Advertising of America (COA) to provide a public right-of-way recycling and waste collection system within the urban services district. COA will supply and maintain trash and recycling containers at no cost to Metro in exchange for advertising rights on the containers. Metro public works currently collects the trash at these receptacles, and does not provide separate recycling receptacles at these locations. COA will also be responsible for the collection of trash in their receptacles. Metro will receive between 2.5% and 8% of all of COA's gross advertising revenues resulting from the waste receptacles, and the department of public works will be allowed at least 10% of the advertising space for promoting environmental messages. The public works department will have the authority to add or remove locations where the receptacles are to be located. The term of this agreement is for five years beginning September 1, 2011.

The contractor's response to the request for proposals (RFP) resulting in this contract includes pictures of the containers and of sample advertisements. The department of public works will have material available at the public works and budget and finance committee meetings showing their appearance. The RFP and the contractor's response to the RFP, both of which are incorporated into the contract, include provisions requiring public works approval of
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ORDINANCE NO. BL2011-965 (continued)

advertisements before they are placed on the receptacles, and allowing public works to remove advertisements deemed to be objectionable. Specifically, advertisements will be prohibited if they:

- Contain inaccurate or deceptive claims or statements;
- Present products prohibited from sale to minors in such a way as to appeal particularly to persons under legal age;
- Present demeaning or derogatory portrayals of individuals or groups;
- Take a stand on controversial societal issues;
- Exploit violence or sexuality; or
- Promote tobacco products

The council office would point out that section 6.04.020 of the Metropolitan code expressly prohibits the placement of advertisements within the public right-of-way. If this ordinance approving the advertising agreement is enacted, the council office is of the opinion that section 6.04.020 should be amended at the beginning of the next council term to allow such advertisements with the permission of the Metropolitan Government.

ORDINANCE NO. BL2011-966 (HODGE & BARRY) – This ordinance approves a lease between the Metropolitan Government and the state department of transportation (TDOT) in relation to the construction and maintenance of a berm. Metro will be leasing a portion of the Interstate 65 right-of-way between the Cumberland River and Third Avenue North for this berm. The term of the lease is from July 1, 2011 through June 30, 2026, but may be terminated by either party with sixty days written notice. All improvements to the property will be subject to the prior written approval of TDOT.

ORDINANCE NOS. BL2011-967 & BL2011-968 – These two ordinances authorize the installation and maintenance of underground and aerial encroachments within the Metropolitan Government right-of-way. The applicants have agreed to indemnify the Metropolitan Government from all claims in connection with the installation and maintenance of the encroachments, and are required to provide a \$1 million certificate of public liability insurance naming the Metropolitan Government as an insured party. These ordinances have been approved by the planning commission.

Ordinance No. BL2011-967 (Baker) authorizes Innophus, Inc. to install active warning devices on the industrial railroad spur crossing in front of its facility at 4600 Centennial Boulevard. The purpose of this upgrade is to increase public safety.

Ordinance No. BL2011-968 (Moore) authorizes Nashville Data Link, Inc. to install and maintain approximately 1.24 miles of fiber optic from Murfreesboro Road, to Elm Hill Pike, to Orr Avenue, to Rundle Road, and ending at 505 Fesslers Lane. Nashville Data Link, Inc. is to pay all costs related to the construction and maintenance of the cable. The plans and specifications for the cable must be submitted to and approved by the director of public works.

The mayor and the council reserve the right to repeal this ordinance at any time, and Nashville Data Link, Inc. would be required to remove the cable at its own expense.

ORDINANCE NO. BL2011-969 (BARRY, HODGE & OTHERS) – This ordinance approves a lease between the Metropolitan Government and the state department of transportation (TDOT) for the Gateway to Heritage streetscape improvements. The public works department received a \$608,000 grant in 2008 from the state department of transportation (TDOT) for these streetscape improvements, which were to include new landscaping, directional signage, and an irrigation system. In June 2011, the council approved an agreement by and among the Metropolitan Government, Tennessee State University (TSU), Meharry Medical College, and Jefferson Street United Merchants Partnership for the maintenance of these streetscape improvements along I-40 at Jefferson Street and 28th Avenue North. TSU has agreed to contribute \$447,576 in federal funds to transform the Jefferson Street I-40 underpass into a public plaza. MDHA has also pledged funding for this project.

This lease is for the state right-of-way needed to complete the streetscape project. The term of the lease is for 20 years commencing August 1, 2011, but may be terminated by either party with sixty days written notice. All improvements to the property will be subject to the prior written approval of TDOT.

ORDINANCE NO. BL2011-970 (BARRY, HODGE, & DUVALL) – This ordinance accepts a contribution in the amount of \$50,000 from Centex Homes for road improvements at the intersection of Hamilton Church Road and Mt. View Road.