

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: **April 1, 2008**

RE: **Analysis Report**

Balances As Of:	<u>3/25/08</u>	<u>3/28/07</u>
<u>GSD 4% RESERVE FUND</u>	* \$21,891,153	\$985,007
<u>CONTINGENCY ACCOUNT</u>		
USD	\$50,000	\$50,000
<u>GENERAL FUND</u>		
GSD	\$23,429,103	\$31,120,793
USD	\$15,945,572	\$12,243,660
<u>GENERAL PURPOSE</u>		
<u>SCHOOL FUND</u>	\$61,509,540	\$37,755,710

* Assumes estimated revenues in fiscal year 2008 in the amount of \$7,646,328

– RESOLUTIONS –

RESOLUTION NO. RS2008-215 (TOLER, FOSTER & OTHERS) – This resolution, as amended, approves an application for a grant in the amount of \$547,635 to acquire and demolish homes located at 5405 and 5409 San Marcos Drive. These homes are located on a tributary to Seven Mile Creek known as Brentwood Branch. These grant funds would be used for the acquisition and demolition of the homes, plus the cost of appraisal, legal fees and disconnection of water and sewer, for a total cost of \$730,180. Metro will be responsible for a 25% match of \$182,545 to be provided through the stormwater division.

The home at 5409 San Marcos Drive was purchased by the current property owner in 2002 at a sale price of \$215,200. The 5405 property was purchased in 1984 for \$101,000. The grant application provides that the estimated acquisition price for 5405 San Marcos Drive is to be \$366,255, and the price to acquire 5409 San Marcos is \$344,925. If the grant is awarded, the actual acquisition price will be determined by an appraisal of the homes.

RESOLUTION NO. RS2008-221 (LANGSTER & JAMESON) – This resolution appropriates \$7,628,640 in housing and community development block grant (CDBG) funds for the years 2007-2008 and 2008-2009. CDBG funds are federal grant funds designated for affordable housing activities to provide matching funds and for neighborhood activity funds for youth initiative programs and community projects. A large portion of the CDBG funds are targeted at specific neighborhood strategy areas (NSAs) and commercial district areas. These funds will be used as follows:

	<u>2007-2008</u>	<u>2008-2009</u>
General Administration	\$550,000	\$555,804
Planning	\$400,000	\$413,637
Property Acquisition	\$325,000	\$308,029
Relocation	\$50,000	\$47,389
Economic Development	\$250,000	\$236,945
Rehabilitation Program	\$1,350,000	\$1,166,608
Affordable Housing Assistance	\$165,000	\$156,384
Special Neighborhood Activities	\$360,000	\$360,000
Section 108 Loan Repayment	<u>\$400,000</u>	<u>\$533,844</u>
Total	\$3,850,000	\$3,778,640

The remaining CDBG funds will be appropriated by resolution as the plans for the expenditure of the funds are completed.

RESOLUTION NO. RS2008-222 (MURRAY) – This resolution sets a second public hearing for the creation of the Skyline Redevelopment Plan administered by the Metropolitan development and housing agency. This proposed plan is the subject matter of Ordinance No. BL2008-154, which has been deferred until the April 15th meeting. There was an issue regarding whether property owners received adequate notice of the previous public hearing required under state law, so a second public hearing is being held to cure any defect. The public hearing will be held Tuesday, April 15, 2008 at 6:30 p.m. in the council chamber to receive further public input on the redevelopment plan.

RESOLUTION NO. RS2008-223 (JAMESON & COLE) – This resolution approves an amended and restated intergovernmental agreement between the Metropolitan Government and the Sports Authority related to the Nashville arena (Sommet Center) for the benefit of the Nashville Predators. The original agreement, which was approved by the council in September 1996, provided for the continued construction and management of the arena. At the time, Metro agreed to issue \$22.4 million in general obligation bonds to complete the arena, which had a total construction cost of approximately \$160 million. Pursuant to the agreement, the ownership and operation of the arena was turned over to the Sports Authority after the arena was completed. The agreement was amended in January 1998 to, among other things, increase the maximum amount of the ticket surcharge to \$1.75 per ticket for 10 years and to provide that Metro would loan the Sports Authority the \$20 million inducement fee for the Predators. The inducement fee was financed with revenue bonds issued by Metro. The Nashville Predators have been the primary tenant of the arena since 1998.

In accordance with the original intergovernmental agreement, the Sports Authority is currently operating under two agreements with the Predators. The first is a license and use agreement, which is essentially for the lease of the arena. The second agreement is a management agreement with Powers Management, which is a wholly-owned subsidiary of the Predators that is responsible for the operation of the arena. Incorporated within the amended and restated intergovernmental agreement are an amended and restated license and use agreement and management agreement. Pursuant to the original intergovernmental agreement, any changes to the license agreement and/or the management agreement must be approved by the council before they can become effective. To assist in the explanation of this proposal, this analysis will discuss the changes in the agreements in tandem, as though they are one agreement.

The primary purpose of the changes is to better ensure that the Predators will remain in Nashville for the next several years. In order to accomplish this goal, the revised deal provides for a reduction in facility rent and additional incentives to encourage the manager to bring more events to the arena. A summary of the additional revenues/incentive payments is as follows:

- The annual ticket receipts fee (facility rent) paid by the Predators to the Sports Authority is being reduced by \$750,000. The current agreement provides that the Predators pay 5% of the net NHL ticket receipts to the Sports Authority. The new agreement will allow the Sports Authority to terminate the \$750,000 reduction after June 30, 2012.
- The base management fee for the management and operation of the arena is increased from approximately \$235,000 per year to \$2 million per year through June 30, 2012. After 2012, the management fee will be reduced to \$250,000 per year.
- The Predators will be entitled to 100% of the concessions sales at the arena. Under the existing agreement, the Sports Authority receives 40-48% of these revenues. This additional revenue estimate for fiscal year 2006 was \$170,000.
- The Predators will be entitled to 100% of the non-NHL advertising revenues, and will be responsible for 100% of the advertising expenses. The existing agreement provides that the Sports Authority receives 50% of these revenues. This revenue estimate for fiscal year 2006 was \$288,510.
- The Predators will be entitled to the naming rights for the rehearsal hall and other certain areas of the arena.
- The agreement also provides for a number of incentive payments for the manager. Under the existing agreement, the maximum incentive fee Powers Management could receive for the operating year ending June 30, 2007 would be \$335,024. The new

agreement provides for an incentive payment not to exceed \$2 million to be comprised of the following:

- 100% of the facility rent from special events. Powers Management will be entitled to lease the facility for up to 15 events per year and can keep the facility rent as a portion of the incentive fee.
- 100% of the funds received from the Nashville convention and visitors bureau (This amount does not count toward the \$2 million incentive fee cap).
- 50% of the amount by which the sum of the following items exceeds the amount of revenue from these items for the operating year ending June 30, 2006, which was \$6,931,726:
 1. local sales tax generated at the arena (less the portion for schools)
 2. state sales tax allocation rebated to the Sports Authority by the state
 3. ticket surcharges
 4. facility rent
 5. food and beverage revenues
 6. merchandising revenue
 7. parking revenue
 8. Ticketmaster royalties

The Sports Authority will have the authority to terminate these incentives after June 30, 2012.

The proposed agreement provides for a cap on the operating losses incurred by the Sports Authority (Metro) for the arena at the FY 2006 amount (\$3,788,262) plus an annual adjustment based upon a consumer price increase index. Powers Management will be responsible for all operating losses in excess of this amount. The new agreement also includes revised early termination provisions and reimbursement amounts to encourage the Predators to stay in Nashville. The existing agreement provides that the Predators can terminate the agreement if the average attendance is below 14,000 for two consecutive years, and does not increase above 14,000 during the cure season. The new contract prohibits termination during the 2008, 2009 and 2010 seasons. The Predators will be able to terminate the contracts effective on or after June 30, 2010 by reimbursing Metro \$20 million if the team and manager's cumulative loss exceeds \$20 million and the average paid attendance is less than 14,000 per game. The early termination reimbursement amount increases to \$25 million in 2011, and is reduced to \$10 million from and after June 30, 2012.

The new agreements require that the owner of the team and the owner of the management company be the same. Although this was the case under the prior owners of the Predators, the agreements did not require it. The new agreements also provide that a default under one agreement is deemed to be a default under the other. The agreements further provide for liquidated damages to be paid to Metro in the amount of \$50 million for breaches or defaults occurring prior to December 1, 2010. The liquidated damages amount decreases to \$35 million in 2011 and is reduced \$2 million each year thereafter with a floor of \$10 million.

Another key difference between the existing agreements and the new proposal are the local ownership and guaranty requirements. The proposed agreement provides that the Sports Authority can terminate the rent reduction discussed above in the event the local ownership of the team falls below 50%. Further, each member of the local ownership group must guarantee 125% of his/her ownership percentage multiplied by \$25 million, which results in a total

aggregate guaranty of \$31.25 million. The local guarantors are as follows: David S. Freeman, Herbert A. Fritch, Joel Edward Dobberpuhl, Holly Dobberpuhl, Thomas Cigarran, Christopher Cigarran, Dewitt C. Thompson, John Thompson, and William Del Biaggio. In addition to the local ownership guaranty, the Predators must maintain a net worth equal to the liquidated damages amount. The net worth is to be calculated, at the discretion of the Predators, as the fair market value of the team minus liabilities, or the audited net worth as determined by an independent certified public accountant using generally accepted accounting principles.

The new agreement includes a requirement that ticket prices remain below the average NHL ticket price. The existing agreement contains no such limitation on ticket price. The new agreement also increases the ticket surcharge from \$1.75 per ticket to \$2.00 per ticket for non-team events. The surcharge for Predators games will remain at \$1.75. The Predators will also be allowed to give away up to 40,000 tickets per year without incurring the ticket surcharge fee. The existing limitation is 750 complimentary tickets per home game.

Another topic worthy of discussion in the proposed agreement, which apparently contributed to the delay in this proposal moving forward, are the provisions governing assignment and change of control. Under the current agreement, the Predators cannot assign the agreement without the consent of the Sports Authority, but the documents were silent as to change in control. The new agreement would permit a change of control in the team while the rent reduction is in effect (at least until June 30, 2012) with the consent of the Sports Authority so long as there is no team default or guarantor default. If the Sports Authority does not consent to the change in control, the Predators can go ahead and cause the change in control, but the team would no longer be entitled to the incentives discussed above. After June 30, 2012, the Predators can cause a change in control provided the NHL approves the transfer and the ownership of the team and the arena manager are the same. The Predators will also be allowed to pledge its rights and interests under the agreement to its senior lender, but the bank must give 60 days notice to the Sports Authority prior to accelerating the loan. The senior lender has a security interest in the team and can transfer its ownership interest to another entity upon notice to the Sports Authority, but the owner of the team and the arena manager must be the same entity.

The agreement also provides for a payment in the amount of \$682,000 to the former owners of the Predators, which represents previously earned performance fees. The performance fees for years 2004 through 2007 have been withheld by the Sports Authority for the past several years. In exchange for the payment of this performance fee, the former owners agree to release Metro from all claims and Metro agrees to release the former owners.

The council office would point out that the proposed agreements would be effective retroactively to July 1, 2007. Thus, all of the incentive payments, rent reduction, etc., will be determined based upon an effective date of July 1, 2007 for accounting at the end of the current fiscal year. With this retroactive effective date, the Predators will be in the same position as if the agreement had been approved when the term sheet was first proposed to the council in November 2007. Since the agreement provides that the amount of the base management fee and the net operating loss cap are to increase beginning with the second operating year by a percentage equal to the lesser of 5% or the percentage increase in the consumer price index, the subsidy for the Predators will increase again effective July 1, 2008, as next fiscal year will be considered the second operating year.

To further summarize the net effect of the proposal, the Predators will be receiving a total of approximately \$3 million in new money from Metro annually, plus the operating loss cap of \$3.7

million. These funds are being provided through the hotel occupancy tax, not property tax revenues. According to the finance director's presentation of the mayor's proposed fiscal year 2009 budget, the maximum subsidy for the arena for next year will be \$7,351,500. The \$3 million of new money is made up of the \$1.7 increase in the management fee, \$750,000 in rent reduction, \$289,000 in non-hockey advertising revenue, and \$170,000 in additional concessions revenue. The Predators will also have the ability to earn an additional \$2 million annually through the incentive payments, plus all of the revenue from the convention and visitors bureau, which does not count toward the \$2 million incentive payment cap. The Predators have provided an opinion from their consultant, Sports Value Consulting, LLC, that this proposal is reasonable from Metro's standpoint when compared with other NHL arrangements in other cities.

The Sports Authority will have the right to terminate the agreements effective July 1, 2014 or July 1, 2021 with two years written notice to the Predators.

RESOLUTION NO. RS2008-224 (MAYNARD & COLE) – This resolution approves a renewal of a contract between the Metropolitan board of health and United Neighborhood Health Services to provide medical services to homeless clients of the health department. The health department receives state and federal grant funds to provide healthcare services for the homeless at the downtown clinic. In 2005, the health department entered into a contract with United Neighborhood Health Services to provide a portion of the medical services. The board of health now desires to renew the contract.

Pursuant to the contract, United Neighborhood Health Services will provide examinations, diagnosis, and treatment of medical conditions of persons seen at the downtown clinic. In addition, they will provide after-hours care for these patients. These services will be provided by a licensed physician, nurse practitioner, and medical assistant. Metro will pay \$75 per hour for doctor services and \$41 per hour for nurse practitioner services, working twenty hours per week. Metro will also pay \$125 per hour for four hours a week of administration and consultation services provided by the doctor, and \$16 per hour for two hours of medical assistant services per week. The total compensation to be paid by Metro under the contract is not to exceed \$163,280. The contractor will be required to maintain liability insurance in the amount of \$1 million per occurrence. The term of this agreement is from April 1, 2008 through March 31, 2009, with a possible extension of four additional terms.

RESOLUTION NO. RS2008-225 (COLE & CRADDOCK) – This resolution approves a grant in the amount of \$1,114,038.28 from the Tennessee emergency management agency to the Mayor's office of emergency management to support the ongoing efforts to prevent, respond to, and recover from incidents of terrorism. These federal pass-through funds are to be used to pay for training exercises, planning, management, and equipment purchases allowable under the 2007 Homeland Security grant program. The term of this grant extends through April 30, 2010.

RESOLUTION NO. RS2008-226 (HARRISON & COLE) – This resolution approves a second amendment to a lease agreement between KBS Nashville Industrial Portfolio I and the Metropolitan Government for space at 523 Mainstream Drive in Metrocenter for use as

temporary facilities during the Howard office building renovation. This lease was originally approved in 2002 to temporarily house the courts during the construction of the A.A. Birch building and the renovation of the Metro courthouse. The original lease agreement provided for the lease of approximately 47,246 square feet of space, and was amended in 2003 to add an additional 895 square feet of space.

This amendment approves a three year extension of the lease at a monthly rental rate of \$49,733.98 for the first year, \$51,226.00 for the second year, and \$52,762.78 for the third year. The total rental amount to be paid by Metro for the three-year term will be \$1,844,673.10. Metro will be leasing 47,246 square feet of space to house the county clerk, Metro social services, and the department of information technology services while the Howard school building is being renovated. All other provisions of the original lease remain in full force and effect.

Ordinance No. BL2002-1211, which approved the original lease agreement, provides that amendments to the lease may be approved by resolution of the council receiving twenty-one affirmative votes.

RESOLUTION NO. RS2008-227 (COLE) – This resolution authorizes the department of law to compromise and settle the personal injury claim of Jason Bowers against the Metropolitan Government in the amount of \$23,200. On March 2, 2007, a Mayor’s office of emergency management employee ran a red light at the intersection of Stewart’s Ferry Pike and Laurel Drive as a vehicle driven by Amanda Hamilton was attempting to turn left onto Stewart’s Ferry Pike. The Metro employee struck the left rear of Ms. Hamilton’s vehicle and caused injuries to Jason Bowers, who was riding as a passenger in Ms. Hamilton’s vehicle. Mr. Bowers was treated at Vanderbilt Hospital for thoracic muscle strain and an injured shoulder, incurring medical bills in the amount of \$21,919.80 and lost wages in the amount of \$189.00.

The department of law recommends settling this case for \$23,200 to be paid from the self-insured liability fund as liability on the part of the government is not in dispute. The Metro employee involved in this accident was suspended from driving Metro vehicles for 120 days.

RESOLUTION NO. RS2008-228 (COLE) – This resolution authorizes the department of law to accept \$6,236.66 to settle the Metropolitan Government’s property damage claim against April Marbury. On December 19, 2007, a Metro fire department employee was stopped in traffic on Battery Lane when the Metro vehicle was struck in the rear by a vehicle driven by April Marbury. Ms. Marbury failed to notice that the traffic in front of her had stopped. The accident caused damage to Metro’s 2005 Dodge Stratus in the amount of \$6,236.66. This resolution settles the claim for the amount of property damage done to the vehicle.

– BILLS ON SECOND READING –

ORDINANCE NO. BL2008-170 (CRADDOCK) – This ordinance amends the Metropolitan Code to allow the fire marshal to grant waivers from the mandatory installation of private fire hydrants. Since 1988, the code has prohibited new residential or commercial buildings from being located more than 500 feet from a fire hydrant. The code includes certain specifications for private fire hydrants, including the size of the water main, color of the hydrant, and that the hydrant be installed in accordance with an approved plan. This code section was amended in December 2007 to exempt single-family residential homes constructed on a lot of five acres or more in size from the 500-foot fire hydrant requirement.

This ordinance would allow the fire marshal to grant a waiver from the fire hydrant installation requirement when he determines that a fire hydrant in a particular location is not necessary. The ordinance requires the fire marshal to develop a review process for determining whether a waiver of the fire hydrant requirement or alternate proposal is appropriate.

ORDINANCE NO. BL2008-171 (CRADDOCK & COLE) – This ordinance authorizes the police department to accept the donation of a Tennessee walking horse named “Superior Candidate”. This horse will be used by the police department’s mounted patrol unit. “Superior Candidate” is being donated by Ben and Charlotte Downing.

ORDINANCE NO. BL2008-172 (EVANS) – This ordinance authorizes the department of water and sewerage services to use the Metropolitan Government’s existing contract with UtiliQuest to provide utility location services for the Tennessee One Call system. Under state law, anyone about to engage in any digging or excavation work must notify Tennessee One Call of their intent to dig. Tennessee One Call then notifies all utilities in the area of the request. The utility then has 72 hours to locate the underground utilities in the area and mark them to prevent damage from the excavation.

Metro water services has historically performed its own utility location work, with an estimated cost of \$13.00 per location, to comply with the state law. The average number of locations performed by the department is 33,000 per year, at a total annual cost of \$429,000. The government has an existing contract with UtiliQuest to provide locating services for other Metro agencies. Metro water services can use the existing contract with UtiliQuest at a cost of \$10.50 per location, which will save over \$82,500 per year. The current Metro employees performing these services will be retrained and assigned to other understaffed programs within the water department. This contract will not result in the loss of any existing Metro jobs or lay off any employees.

The Metro Code requires all contracts for the privatization of government services with a contract amount in excess of \$500,000 be approved by the council by ordinance.

BILLS ON THIRD READING –

ORDINANCE NO. BL2008-115 (TYGARD) – This zoning text change, as amended, amends the definition of “two-family structure” to allow two-family dwelling units to be separate structures. The zoning code currently defines a two-family structure as two attached dwelling units forming a single structure connected by not less than eight feet of continuous floor, roof and walls. A common practice in recent years has been for developers to build two separate single-family structures, but construct a connecting wall between the two to allow both structures to be on a single lot. This ordinance would essentially remove the requirement that a connector wall be constructed between the units. Properties within the urban zoning overlay and the historic zoning overlay districts are expressly excluded from this ordinance. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2008-117 (WILHOITE) – This ordinance, as amended, amends the wrecker equipment provisions in the Metro Code to require wrecker operators to keep the wrecker boom/wheel lift in its upright or retracted position when not in use. The code currently authorizes the transportation licensing commission to enact rules and regulations pertaining to equipment on wreckers, but the code does not provide any express restrictions on the use of the boom while the wrecker is not transporting a vehicle. This ordinance would require all wrecker operators to keep the wrecker boom/wheel lift in its full, upright or retracted position except while the wrecker is actually in the process of towing a vehicle.

ORDINANCE NO. BL2008-120 (HARRISON & COLE) – This ordinance approves a lease agreement between the Metropolitan Government and Firstcal Industrial 2 Acquisition, LLC for approximately 15,946 square feet of space on property located at 621 Mainstream Drive, known as Corners II, to be used as office space for the Nashville career advancement center (NCAC). Metro first leased 22,181 square feet of office space for NCAC at this location in 2002, and the prior lease has now expired.

The lease is for a term to begin upon approval by the council and extending through September 7, 2010, with an optional one year extension. The rent to be paid by Metro will be \$232,511 for the first year, with 3% annual increases thereafter. The base rent for the premises and annual increases will be paid according to the following schedule:

<u>Year</u>	<u>Per Month</u>	<u>Per Year</u>
2008	\$19,376	\$232,511
2009	\$19,515	\$234,182
2010	\$19,957	\$239,486

Firstcal Industrial will be responsible for maintaining all building systems, the exterior and interior of the building, the electrical and air conditioning systems, and for insuring that the premises comply with the requirements of the ADA. Firstcal will also be responsible for paying all utilities for the premises and for paying the casualty insurance for the premises. Metro will be responsible for insuring the contents of the office. Metro will also be required to supply its own janitorial services.

This lease agreement may be amended by resolution of the council receiving 21 affirmative votes.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2008-128 (GILMORE) – This ordinance abandons the right-of-way for Alley No. 437, from 17th Avenue South to Alley No. 442, between Edgehill Avenue and Grand Avenue. This closure has been requested by H. Ray Ragsdale, the owner of the adjoining tracts. This portion of the right-of-way is no longer needed for government purposes. This ordinance has been approved by the traffic and parking commission, but has been disapproved by the planning commission.

ORDINANCE NO. BL2008-155 (RYMAN & JAMESON) – This is a routine ordinance that readopts the Metropolitan Code prepared by Municipal Code Corporation to include all ordinances enacted on or before October 16, 2007. Municipal Code Corporation has the contract with Metro to codify all ordinances enacted by the council, as well as to update and maintain the on-line version of the Code. The council periodically readopts the Code to make sure the printed and online versions are kept up to date.

ORDINANCE NOS. BL2008-156 & BL2008-157 – These two ordinances abandon water and sewer lines and easements that are no longer needed by the department of water and sewerage services. The ordinances provide that future amendments may be approved by resolution of the council. These ordinances have been approved by the planning commission.

Ordinance No. BL2008-156 (Evans) abandons an 8" water line and easement at 1120 Glendale Lane and 1118 Granny White Court for the Harding Heights water relocation project. The existing water line will be replaced by a new 8" line at the property.

Ordinance No. BL2008-157 (Moore & Evans) abandons an 8" sanitary sewer line and easement at the 8th Avenue Lofts project located at 2201 8th Avenue South. The existing sewer line will be replaced by a new 8" sewer line at the property.

ORDINANCE NO. BL2008-161 (COLEMAN, BARRY & OTHERS) – This ordinance, as amended, amends the Metro Code to establish a procurement nondiscrimination program for the Metropolitan Government. This ordinance was developed by Metro with the assistance of Griffin & Strong, P.C., which is an Atlanta-based law firm that conducted the previous two disparity studies for the Metropolitan Government. The most recent disparity study completed in 2005 concluded that Metro had become a passive participant in discrimination based upon race, gender or ethnicity.

The objective of this procurement nondiscrimination program is to promote open competition in Metro's procurement process and to protect Metro from "becoming a passive participant in any unlawful discrimination." This objective is to be accomplished through the creation of the Office of Minority and Women Business Assistance (BAO) within the finance department. The finance director has informed the council that the existing finance department employees should be

able to staff this new office. The duties of the BAO will include assuming the primary responsibility for administration and enforcement of the procurement nondiscrimination ordinance. This will include:

1. Verifying certification of minority and women owned business enterprises (MWBEs).
2. Maintaining a current database of certified and available MWBEs.
3. Recommending annual "benchmarks", which are percentage ranges based upon the MWBE availability compared with past participation. The ordinance authorizes the purchasing agent to hire consultants to help determine MWBE availability.
4. Recommending "goals" to the director of finance and director of law if benchmarks are not met for two consecutive years.
5. Investigating complaints.
6. Preparing written rules, regulations and procedures to be submitted to the procurement standards board.

The ordinance also requires bidders on Metro projects to submit several documents along with their bids. First, bidders would be required to submit a covenant of nondiscrimination stating that they (1) promise to adopt Metro's equal opportunity in contracting policies; (2) will attempt certain good faith efforts to solicit MWBE participation; and (3) will not engage in discriminatory conduct. Failure of a contractor to fulfill these promises will constitute a material breach of contract, which may result in suspension or debarment. Second, contractors would be required to submit a statement that written notice has been delivered to at least three available MWBE subcontractors. If no certified MWBE's are available to perform the required services, the contractor would be relieved from this requirement. Third, the bidder must submit a statement of successful subcontractors and a statement of interested subcontractors/vendors. Fourth, the bidder would be required to submit a statement of bid proposals/price quotations giving the potential subcontractor's name race, gender, national origin, business size and price quotation.

Bidders on Metro business will be required to undertake certain "good faith efforts" to solicit MWBE participation in the procurement process. Bidders would be required to maintain detailed records for three years of all correspondence and responses, telephone logs, and other relevant documents pertaining to contact with potential subcontractors. In addition to the required good faith efforts, bidders may also demonstrate good faith by dividing the contract into economically feasible segments that could be performed by a MWBE, by advertising in trade publications, and providing assistance to MWBEs in the form of equipment, supplies, bonding, letters of credit and/or insurance.

All first-ranked bids on projects will be submitted to the BAO to determine if the bid complies with the procurement nondiscrimination ordinance. If the BAO approves the bid, the purchasing agent is to award the contract. If, after a conference with the bidder, the BAO determines that the bidder is not in compliance, the purchasing agent is to move on to the second-ranked bidder.

As stated above, the ordinance provides for the establishment of benchmarks to track the inclusion of MWBEs in the procurement process. If review of Metro's procurement practices continue to show a pattern of underutilization or discrimination after using benchmarks and good faith efforts for two years, the government can implement race-conscious "goals" upon approval of the Council by resolution adopted with 21 affirmative votes. The establishment of

goals would allow the inclusion of MWBEs as an additional factor in the evaluation of a bid. If goals are established, then all contractors would be required to use good faith efforts to achieve the goals through subcontractor work. Progress toward the goals would be based on the percentage of the dollar amount of the work performed by the MWBE subcontractors. These goals would expire when the goals are met or after two years, whichever is less. In order to protect against a constitutional challenge, the implementation of any race-conscious measures would need to be supported by evidence identifying discrimination on the basis of race.

The BAO is to submit an annual report to the Council regarding the effectiveness of the program. The BAO will also be responsible for recommending appropriate enforcement mechanisms for the program. Failure to comply with the requirements of the procurement nondiscrimination ordinance can result in suspension or disbarment of a contractor.

This ordinance does not repeal the existing chapter in the procurement code pertaining to assistance to small and disadvantaged businesses. Rather, this program would be in addition to the existing program.

The ordinance will be effective upon its enactment, but the new procurement nondiscrimination program will be applicable to procurements initiated 120 days after the enactment of the ordinance (or earlier upon certification by the director of finance that the BAO has been established).

ORDINANCE NOS. BL2008-162 through BL2008-164 – These three ordinances authorize the Metropolitan Government to enter into participation agreements with private developers to provide public sewer service to properties in Williamson County. Back in 1998, the department of water and sewer services expanded two trunk sewer lines in anticipation of private developments tying on to the system. Pursuant to these agreements, the developers will contribute \$2,000 per single-family connection to the sewer system in aid of construction. These funds are to be deposited into the water and sewer extension and replacement fund. These are typical participation agreements entered into by the department of water and sewerage services whereby private property owners and/or developers contribute a portion of the cost to extend or upgrade public water and sewer service. The properties benefiting from the sewer connections become regular customers of Metro water services and pay the same sewer rates as customers in Davidson County.

Ordinance No. BL2008-162 (EVANS) approves a participation agreement with John Ring (Tennessee Contractors, Inc.) to provide public sewer service to phase 11 of the Fountainbrooke subdivision. Tennessee Contractors, Inc., has agreed to contribute \$46,000 toward the cost of the project in aid of construction for a total of 23 single-family home connections.

Ordinance No. BL2008-163 (EVANS) approves a participation agreement with B&Y Properties to provide public sewer service to phase 1 of the Britain Downs subdivision. B&Y Properties has agreed to contribute \$84,000 toward the cost of the project in aid of construction for a total of 42 single-family home connections.

Ordinance No. BL2008-164 (COLE & EVANS) approves a participation agreement with Sunset Properties to provide public sewer service to the Sunset Park subdivision. Sunset

Properties has agreed to contribute \$186,000 toward the cost of the project in aid of construction for a total of 93 single-family home connections.

ORDINANCE NO. BL2008-165 (COLEMAN, RYMAN & OTHERS) – This ordinance authorizes the acceptance of 24 easements for various stormwater projects in Davidson County. Easements are to be accepted for the following properties:

- 2834 Brick Church Pike – Council District 2
- 534 Thompson Lane – Council District 16
- 4022 Sells Drive – Council District 12
- 6420 Centennial Boulevard – Council District 20
- 4017 Wallace Lane – Council District 34
- 1101 18th Avenue South – Council District 19
- 1033 18th Avenue South – Council District 19
- Pettus Road, unnumbered – Council District 31
- Highway 70, unnumbered – Council District 35
- 2202 A Hobbs Road – Council District 34
- 1900 Belmont Boulevard – Council District 18
- Carothers Road, unnumbered – Council District 31
- 3510 Central Pike – Council District 14
- 300 11th Avenue South – Council District 19
- Bell Road, unnumbered – Council District 13
- 705 Murfreesboro Pike – Council District 16
- 1525 J P Hennessy Drive – Council District 32
- Cotton Lane, unnumbered – Council District 27
- 3901 Granny White Pike – Council District 25
- 1915 Gallatin Pike – Council District 10
- Old Hickory Boulevard, unnumbered – Council District 35
- 535 Shute Lane – Council District 11
- 5444 Edmondson Pike – Council District 27
- 335 Arena Avenue – Council District 21
- 326 Harding Place – Council District 28
- 2110 Rosa L Parks Boulevard – Council District 2