

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director
Metropolitan Council Office

DATE: **December 4, 2012**

RE: **Analysis Report**

Balances As Of:	<u>11/28/12</u>	<u>11/30/11</u>
<u>GSD 4% RESERVE FUND</u>	*\$28,756,746	\$25,836,951
 <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 \$25,514,400**

– RESOLUTION ON PUBLIC HEARING –

RESOLUTION NO. RS2012-503 (GILMORE) – This resolution approves an exemption for Rolf and Daughters restaurant located at 700 Taylor Street from the minimum distance requirements for obtaining a beer permit. The Metro code prevents a beer permit from being issued to an establishment located within 100 feet of a church, school, park, daycare, or one or two family residence. However, the code was amended in September 2010 to exempt restaurants that already have a state on-premises liquor consumption license from Metro’s minimum distance requirements to obtain a beer permit upon the adoption of a resolution by the council. A public hearing must be held by the council prior to voting on this resolution.

– BILLS ON PUBLIC HEARING –

ORDINANCE NO. BL2012-291 (STANLEY) – This ordinance amends the Metro zoning code to provide that the conversion of material into a fuel product or asphalt is not a permitted function as part of a recycling facility, and to prohibit such activity on construction/demolition (C&D) landfill property. The zoning code permits recycling facilities with conditions in the industrial (IWD, IR, and IG) zoning districts. C&D landfills are permitted with conditions in the intensive commercial and industrial districts, and are permitted as a special exception use in the agricultural and the intensive mixed use districts. The zoning code does not specifically address the conversion of material into a fuel product, but the zoning administrator (who is charged with interpreting the zoning code) has classified this activity as a heavy manufacturing use, which is only permitted in the IG zoning district. So, the zoning administrator would sign off on this type activity in conjunction with the operation of a C&D landfill or recycling facility only if it was located in the more intensive IG zoning district.

This ordinance would expressly prohibit the conversion of construction debris, biomass, or other material (such as roofing shingles) into a fuel product or asphalt through an incineration process at a recycling facility or in conjunction with a C&D landfill, regardless of the zoning district the facility was located in.

The department of public works submitted a letter to the planning commission in opposition to this ordinance since a C&D landfill would not be permitted to have an incinerator under the state regulations, anyway. The public works letter further asserts that the bill would not be consistent with the Davidson County region solid waste plan recommendations pertaining to recycling activity.

This ordinance has been disapproved by the planning commission.

ORDINANCE NO. BL2012-292 (BARRY & STEINE) – This ordinance amends the Metro zoning code provisions applicable to home recording studios. The zoning code currently allows a home occupation as an accessory use in the residential zoning districts not to exceed 25% of the floor area of the home, with a maximum of 500 square feet. Since the adoption of Metro’s current zoning code in 1998, home occupations have been prohibited from serving clients/customers on the property. Only one employee that is not a resident in the home may work in the home. Thus, while home recording studios are technically allowed, such studios cannot have more than one outside musician or technician not residing in the home come to the property to record.

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ORDINANCE NO. BL2012-292 (continued)

This ordinance adds a new land use specific to home recording studios and would permit such studios to have up to ten clients, customers, musicians, or other visitors come to the property per day. Sufficient off-street parking must be provided for the visitors on a paved or graveled lot not exceeding 25% of the lot area. Home recording studios would be subject to the residential noise restrictions in the Metro code.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2012-312 (CLAIBORNE) – This ordinance amends the Metro zoning code to add “automobile convenience” (a.k.a., minute marts and gas stations) as a use permitted with conditions in the industrial (IWD, IR, and IG) zoning districts. Gas stations are currently only allowed with conditions in the mixed-use, commercial, and downtown zoning districts. The ordinance would limit minute marts in industrial districts to 2,500 square feet in size, which is the same size limitation as retail establishments in industrial areas.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2012-313 (CLAIBORNE) – This zoning text change adds provisions to the code to ensure that the Metropolitan Government is providing adequate accommodations to persons and organizations under the federal Religious Land Use and Institutionalized Persons Act (RLUIPA). This ordinance has been filed at the suggestion of the department of law and the council office to ensure Metro’s continued compliance with federal law in the enforcement of the zoning code. As a result of a 2009 consent decree with the U.S. Department of Justice (DOJ) regarding alleged discriminatory actions by the Metropolitan Government through amendments to and application of Metro’s zoning laws, the council approved Ordinance No. BL2008-333 to give the zoning administrator the authority to avoid the enforcement of zoning ordinances that are inconsistent with the fair housing act or RLUIPA, and to provide a reasonable accommodation to persons with disabilities. The FHA prohibits discrimination against persons seeking to obtain housing on the basis of race, disability, religion, or other protected status, and requires local governments to make reasonable accommodations for disabled persons to ensure they have adequate housing opportunities. The RLUIPA prohibits the enforcement of land use regulations that are discriminatory on the basis of religion or that substantially burden the exercise of religion.

The zoning administrator is responsible for the interpretation and administration of the zoning code. Although RLUIPA was included as part of BL2008-333, the ordinance did not specifically grant the authority to the zoning administrator to make reasonable accommodations to protect religious exercise under RLUIPA. This ordinance expands upon BL2008-333 to ensure that the rights under RLUIPA are protected to the same extent as those applicable to disabled persons under the FHA. This ordinance also adds a provision requiring the zoning administrator to consult with the department of law and other applicable departments before making a reasonable accommodation. The zoning administrator’s decision regarding the reasonable accommodation would be appealable to the board of zoning appeals.

This ordinance has been approved by the planning commission.

– RESOLUTIONS –

RESOLUTION NO. RS2012-488 (LANGSTER & MATTHEWS) – This resolution approves an economic and community development incentive grant to the industrial development board (IDB) for the benefit of HCA Holdings, Inc., and its affiliates. A full analysis of this resolution is included as part of the HCA economic development incentive analysis included at the end of this document.

SUBSTITUTE RESOLUTION NO. RS2012-489 (LANGSTER & MATTHEWS) – This resolution appropriates \$1,050,000 in Capitol Mall urban development action grant (UDAG) repayments for the benefit of HCA Holdings, Inc., and its affiliates. A full analysis of this resolution is included as part of the HCA economic development incentive analysis included at the end of this document.

RESOLUTION NO. RS2012-504 (GILMORE & MATTHEWS) – This resolution approves an annual grant in the amount of \$139,900 from the state library and archives to the Nashville public library system to target library materials to persons that have difficulty using the library and to the disadvantaged. These funds are for general library services, library services to the hearing impaired, materials for the disadvantaged, and to purchase library materials to be used in the interlibrary loan process. The term of this grant is from October 1, 2012, through June 30, 2013.

RESOLUTION NO. RS2012-505 (MATTHEWS) – This resolution accepts a donation in the amount of \$3,500 from the Nashville Downtown Partnership to the Metro planning department to assist in the cost of a tax impact analysis for Nashville. Urban3 has been retained as a consultant to perform a tax impact analysis as part of the general plan project, and this donation will be used to help offset the cost of the analysis.

RESOLUTION NO. RS2012-506 (POTTS, MATTHEWS & STEINE) – This resolution approves an amendment to an agreement with CCBC Operations, LLC (Coca-Cola) regarding the extension of a recycling promotional program called "Recycle and Win!". Under the terms of the agreement, residents choosing to participate in the program will place the sticker they receive in the mail on their recycling bin. A public works employee will be driving around in a specially-marked Toyota Prius on recycling collection days and will randomly select bins to inspect to determine if the appropriate materials are being recycled. Those selected that meet the requirements will receive a \$50 Kroger gift card. Coca-Cola has agreed to provide gift cards to a minimum of 260 program winners.

The agreement also provides for the rental of the prize patrol Prius to Metro at a cost of one dollar. The vehicle must be used exclusively in connection with the Recycle and Win! program. Metro is responsible for all ordinary maintenance of the vehicle.

This amendment simply renews the agreement for a new expiration date of June 30, 2013.

The ordinance that approved the original agreement in 2011 provides that amendments may be approved by resolution.

RESOLUTION NO. RS2012-507 (WEINER, EVANS & OTHERS) – This resolution approves an interlocal agreement with the Harpeth Valley Utility District (HVUD) to purchase drinking water in the event of an emergency or special need. Under state law, municipalities are authorized to enter into interlocal agreements with other public agencies for joint undertakings, subject to approval by the local legislative body by resolution. This agreement provides that Metro water services (MWS) and HVUD may purchase water from each other on a temporary basis in the event of an emergency to the extent that the ability of each district to serve its own customers is not materially diminished. The district receiving the water will be billed by the supplying district at the established rates. This agreement may be terminated by either party upon 180 days written notice.

Metro has entered into similar agreements with other utility districts in the past.

RESOLUTION NO. RS2012-508 (CLAIBORNE, POTTS & MATTHEWS) – This resolution approves an amendment to a grant agreement from the state department of transportation to the Metropolitan department of public works for safety improvements at up to 30 signalized intersections. The improvements to be funded under the original \$1,125,000 grant included new signalization, markings, and guardrails. The intersection improvement projects to be funded through this grant were to be completed not later than August 5, 2012.

This amendment is essentially a substitution of the previous agreement. Under the new agreement, the state will contribute \$5,850,000 in federal pass-through funds toward the intersection improvements with a required Metro match of \$1,462,500. The completion date for the projects has been extended to December 31, 2017.

RESOLUTION NOS. RS2012-509 & RS2012-510 (CLAIBORNE, POTTS & MATTHEWS) – These two resolutions approve intergovernmental agreements between the state department of transportation and the Metropolitan Government for roadway resurfacing. The paving projects are to be completed no later than November 30, 2014. These are typical contracts with the state for road resurfacing authorized under the state-aid highway system program.

Resolution No. RS2012-509 approves a contract for the resurfacing of 1.114 miles of Spence Lane from 400 feet south of Cornelia Street to Lebanon Pike. The state has agreed to provide \$508,575 for this project, with a required Metro match of \$169,525.

Resolution No. RS2012-510 approves a contract for the resurfacing of 1.855 miles of Elm Hill Pike from 250 feet west of Spence Lane to 850 feet west of the Briley Parkway interchange. The state has agreed to provide \$689,250 for this project, with a required Metro match of \$229,750.

RESOLUTION NO. RS2012-511 (MATTHEWS, BENNETT & LANGSTER) – This resolution approves an annual grant in the amount of \$399,888.58 from the state department of transportation to the Metro police department for the continuation of an enhanced DUI enforcement initiative. The purpose of the grant is to reduce traffic related crash fatalities by focusing on alcohol or drug impaired drivers. These federal pass-through funds will be used by the police department for two safety initiatives geared toward reducing impaired driving.

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RESOLUTION NO. RS2012-511 (continued)

The first initiative involves an enhanced enforcement team working Thursday through Sunday nights and on the six holidays associated with heavy alcohol consumption: St. Patrick's Day, Cinco de Mayo, Memorial Day, Independence Day, Labor Day, and New Year's Eve. The second initiative consists of strategically placed sobriety checkpoints or roadblocks.

The term of the grant is from October 1, 2012 through September 30, 2013.

RESOLUTION NO. RS2012-512 (BANKS & MATTHEWS) - This resolution approves the waiver of pension benefit overpayments made to Randy Muir. As a result of staff error, Mr. Muir received a total of \$860.28 in pension benefits in excess of what he was entitled. The Metropolitan Code permits the benefit board to waive such overpayments provided that the beneficiary was without fault or knowledge of the error and would be deprived of income for living expenses if forced to repay the amount of overpayment. The employee benefit board has approved this waiver.

In the event pensioners are underpaid, the back payments are automatically paid without requiring council approval.

RESOLUTION NO. RS2012-513 (MATTHEWS) – This resolution authorizes the department of law to compromise and settle the claims of Jeanette Porter against the Metropolitan Government for the amount of \$37,500. Ms. Porter is the former assistant human resources director for the Davidson County sheriff's office (DCSO). In December 2010, Ms. Porter reported to several DCSO officials that the compensation of employees in the orders of protection division was not being properly calculated. John Taylor, Chief of Warrants, was one of the officials informed. Chief Taylor told the former DCSO HR director, Vickie Black, that the problem needed to be corrected, and to ensure the employees receive any money they are owed. Ms. Black has no memory of this discussion, though it was confirmed by Chief Taylor and Ms. Porter.

A meeting was held a few days later regarding ways to prevent underpayments. Ms. Porter stated in her deposition that Chief Taylor refused at this meeting to pay the amounts owed. However, no one corroborates this testimony. DCSO employees at the meeting recall Chief Taylor stating that the employees were not owed additional money because his employees do not work overtime. Ms. Porter did not follow up with Ms. Black, though she believed the employees were owed the money.

In 2012, Ms. Porter was deposed in a Fair Labor Standards Act (FLSA) case currently pending against DCSO regarding alleged underpayments to corrections officers. After her deposition, Ms. Porter contacted the attorney for the plaintiffs to report the underpayments to the order of protection division employees. The plaintiff's attorney notified the department of law about this contact, who in turn informed the DCSO administrative counsel. DCSO conducted an investigation and uncovered the history of Ms. Porter's alleged reporting of the underpayments in December 2010. Ms. Porter's employment was terminated following the conclusion of the investigation. Her termination letter states that mutual trust between DCSO and Ms. Porter had been destroyed.

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RESOLUTION NO. RS2012-513 (continued)

Ms. Porter filed a retaliation claim against DCSSO alleging that she was fired for contacting the plaintiff's counsel in the other case to report the purported FLSA violations. Ms. Porter's salary at the time of her termination was approximately \$47,000, and she has been unable to find another job. If the case went to trial and the jury found that Ms. Porter had indeed been terminated in retaliation, the jury could award Ms. Porter lost wages, liquidated damages equal to her back pay award, and emotional injury damages.

The department of law recommends settling this claim for \$37,500 plus attorneys' fees since the jury could award a higher amount based upon the amount of back pay that would be owed at the time. Settling the claim now also limits the amount of attorneys' fees Metro would have to pay if Ms. Porter was successful at trial.

RESOLUTION NO. RS2012-514 (MATTHEWS) – This resolution authorizes the department of law to compromise and settle the property damage claim of Bellsouth Telecommunications, Inc., d/b/a AT&T, against the Metropolitan Government for the amount of \$80,000. On June 9, 2009, an AT&T underground air line was severed by a Metro water services (MWS) crew using a backhoe while replacing a fire hydrant at the 1600 block of West End Avenue. The air line was used to pressurize a utility line beneath it. After MWS reported the damage, AT&T was notified by Tennessee One-Call. The MWS crew used hand shovels to complete the digging and backfilling with no further incident. The MWS crew waited until 8:00 p.m. for someone from AT&T to arrive at the scene, but no one came until 1:00 a.m. on June 10.

AT&T began receiving customer complaints about an interruption in service around the time the damage to the line occurred. AT&T's subcontractor, Star Construction, determined that in addition to the air line, the cable beneath it was also damaged by a backhoe, at a repair cost of \$92,348.27. The repair took several months because the affected cable containing 4,800 individual lines had to be removed and spliced 9,600 times.

The MWS crew maintained that it did not damage the underground cable. As a result, Metro asserted that the cable was damaged by Star Construction. However, in granting summary judgment in favor of Star Construction, the court determined that Star could not have damaged the line since it did not use a backhoe at the scene. Further, the service interruption complaints to AT&T began around the time the MWS crew damaged the air line.

The department of law recommends settling the claim for \$80,000 since a court would likely find Metro to be entirely at fault.

RESOLUTION NO. RS2012-515 (A. DAVIS) – This resolution approves the election of notaries public pursuant to state law.

– BILLS ON SECOND READING –

ORDINANCE NO. BL2012-293 (DOMINY, STANLEY & OTHERS) – This ordinance amends the Metropolitan Code to require the board of fair commissioners (“fair board”) to issue a request for information (RFI) to gauge interest from the private sector regarding the future operation of the fairgrounds property. In 1909 the Tennessee general assembly enacted a private act to create a state fair board to manage property that had been conveyed to Davidson County. This property was leased to the state in 1911 for a 99 year term. However, in 1923, the general assembly enacted another private act to authorize the termination of the lease and to authorize the board of fair commissioners to use the property for a “fair or exposition for the benefit of the people”. In addition to the annual state fair, which is the primary purpose for the existence of the fair board, the fairgrounds property has long been used for expo center functions and auto racing.

When the city and county governments were consolidated in 1963, the Metropolitan Charter essentially re-established the board of fair commissioners and vested it with the power to perform all duties imposed on the board in the 1909 and 1923 state acts. The Charter further provides that the council can “assign duties” to the fair board by ordinance. This is the same language that is used throughout the Charter for various departments and agencies, including the auditorium commission, farmer’s market, and the agricultural extension board.

In February 2011, the council approved an ordinance requiring the fair board, working with the planning department and the parks department, to develop a master plan that would include construction of a public park and restoration of Brown’s Creek, recommended modifications to and/or removal of the existing facilities, planned development of the site for mixed-use purposes, recommended zoning changes, and infrastructure improvements for the site and the surrounding area. The master plan process is nearing completion. Subsequently, in August 2011, the voters at a referendum election amended the Charter to provide that all activities currently being conducted on the fairgrounds premises must continue in perpetuity, and to prohibit the demolition of the existing structures without approval by ordinance receiving 27 votes by the council.

This ordinance would require the fair board to issue a RFI for the future private operation of the fairgrounds for the purpose of assisting the board in the identification of potential options to partner with the private sector. This would include making significant capital improvements to the property in exchange for a lease of at least 25 years with a portion of the revenue generated to be shared with Metro. The ordinance does not obligate the fair board to actually award a contract for the future operation. Nor would it prohibit the council from taking further action regarding the functions at the fairgrounds.

The council office would point out that legislative action is not legally required in order for the fair board to take the actions provided for in this ordinance. However, enacting this ordinance would obligate the board to go ahead and issue the RFI as specified in the ordinance.

ORDINANCE NO. BL2012-314 (BANKS, MATTHEWS & LANGSTER) – This ordinance provides for a one-time early retirement incentive to employees of the Metropolitan Government eligible to retire on or before February 28, 2013. According to the recitals included in the ordinance, a main purpose of this retirement incentive is to facilitate some department restructuring and reorganization. The incentive would consist of a one-time payment of \$700 for each year of employment with the Metropolitan Government. Although the early retirement incentive will realize some long-term fiscal benefit, it is designed to be budget neutral in the short term. This would be the fourth retirement incentive program in Metro’s history. The last buyout offered in 2004 provided a \$500 payment per year of service in an attempt to achieve budget savings and position reductions.

Eligible employees will be required to apply for the incentive not later than January 18, 2013. The \$700 payment will be prorated for any part of a year that the employee has worked. The retirement incentive will be paid from the savings generated by the various departments, not from the pension plan itself. Departments will be required to keep the positions vacant until the amount of the incentive payment has been recouped through savings. Any employee who accepts this retirement benefit will be ineligible for rehire with the Metropolitan Government as a full-time employee, but may be rehired as a part-time employee after one year. If for some reason an employee does return to full-time employment with Metro (or part-time within one year), the employee will be required to refund the incentive payment. The last work date for employees accepting the payment cannot be later than February 28, 2013, unless the vacancy would leave inadequate staffing in public safety positions, in which case the last work day can be extended to no later than June 30, 2013. In addition, employees serving in key positions deemed essential to the operation of a department may continue to serve in a part-time basis until June 30, 2013 to allow their replacements to be trained.

The department of human resources has advised that there are 2,595 Metro employees currently eligible to take advantage of this buyout. The council office has requested HR to provide a breakdown based upon those eligible for normal retirement and those eligible for early retirement. In 2004, approximately 440 employees took advantage of the \$500 per year incentive buyout at a cost of \$6.3 million.

ORDINANCE NO. BL2012-315 (MATTHEWS) – This ordinance amends the procurement nondiscrimination provisions in the Metro Code to change the frequency of benchmarking. The procurement nondiscrimination program was implemented in 2008 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 the 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.

The 2008 procurement nondiscrimination ordinance created the Office of Minority and Women Business Assistance (BAO) within the finance department. One of the responsibilities of this office is to recommend annual “benchmarks”, which are percentage ranges based upon minority and women owned business enterprises (MWBE) availability compared with past participation. The ordinance authorized the purchasing agent to hire consultants to help determine MWBE availability.

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ORDINANCE NO. BL2012-315 (continued)

Metro recently hired Griffin & Strong to provide a comprehensive review of statistical MWBE availability benchmarks and an analysis of the benchmarks compared to actual MWBE vendor utilization. Griffin & Strong has recommended that the benchmarking be done every two years instead of annually. This ordinance simply implements the consultant's recommendation.

ORDINANCE NO. BL2012-316 (ALLEN, POTTS & MATTHEWS) – This ordinance authorizes the acquisition of easements for seven properties located on Primrose Circle needed for a stormwater improvement project. The estimated total cost for the easement acquisitions is \$7,000, which is to be paid from the stormwater fund. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2012-317 (POTTS & TODD) – This ordinance abandons 135 feet of a sewer main and a manhole and accepts approximately 150 feet of relocated 8" sewer main with three manholes on property located at 113 Page Road. This ordinance has been approved by the planning commission. Future amendments to this ordinance may be approved by resolution.

ORDINANCE NOS. BL2012-318 & BL2012-319 – These two ordinances approve lease agreements between the Metropolitan Nashville public schools (MNPS) and the Metropolitan development and housing agency (MDHA) for the lease of properties at two housing developments to be used for the community career center program. Pursuant to the lease agreements, MDHA will be responsible for paying utility charges and providing janitorial services, as well as for maintaining the exterior of the premises and the HVAC system. MNPS will be responsible for maintaining the interior of the premises. The terms of the leases are for one year from November 15, 2012 through November 14, 2013, with an option to renew the leases for an additional year. Amendments to the agreements may be approved by resolution of the Metro Council receiving 21 affirmative votes. These two leases have been approved by the planning commission.

Ordinance No. BL2012-318 (S. Davis & Matthews) approves a lease agreement for property located at 302 Foster Street in the Levy Place housing development. MNPS will pay \$1,670 per month for the lease of 5,500 square feet of space, provided that effective February 1, 2013, the rent amount may be reduced pursuant to a formula that accounts for the number of residents of Levy Place who have been enrolled in MNPS programs at no cost to those residents.

Ordinance No. BL2012-319 (Matthews) approves a lease agreement for property located at 1433 Jo Johnston Avenue in the J. Henry Hale housing development. MNPS will pay \$685 per month for the lease of 2,200 square feet of space, provided that effective February 1, 2013, the rent amount may likewise be reduced based upon the number of program participants from the housing development.

– BILLS ON THIRD READING –

ORDINANCE NO. BL2012-289 (TODD) – This ordinance abandons Johnstone Court from Hobbs Road southward to its terminus. This closure has been requested by Harpeth Hall School. The ordinance retains all existing utility easements. Harpeth Hall School is the only affected property owner.

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

ORDINANCE NO. BL2012-294 (DOMINY) – This ordinance, as amended, amends the Metropolitan Code to require certain sole source contracts to be approved by resolution of the council. The procurement code recognizes that there are some contracts for which it is not feasible to put out for public bid when there is only one source capable of providing the particular goods or services. Further, the procurement code provides that contracts for services requiring certain professional expertise are not to be put out for competitive bid, but rather are to be awarded on the basis of recognized competence and integrity. Professional services include legal services, medical services, accounting, financial advisors, architects, and engineers.

This ordinance would require all sole source contracts for the purchase of goods or services in excess of \$250,000 to be approved by resolution of the council receiving at least 21 affirmative votes.

According to the purchasing agent, Metro had two sole source procurement contracts in fiscal year 2011, two in fiscal year 2012, and only one so far in fiscal year 2013 that were valued at \$250,000 or more. Metro has also entered into a sole source contract in the amount of \$300,000 with the Chamber of Commerce for the Partnership 2020 economic development initiative during each of these years.

ORDINANCE NO. BL2012-295 (TYGARD) – This ordinance amends the Metropolitan Code pertaining to the egg handling and dispersal plan requirements for the keeping of chickens on school property. Substitute Ordinance No. BL2012-228, as amended, approved in September 2012 allows up to 20 hens to be kept on school property for educational purposes on lots of five or more acres in the GSD. That ordinance contained a number of health requirements schools must satisfy in order to keep chickens, including:

- Adequate nearby access to hand washing facilities or, in the alternative, disposable rubber gloves for use by all children handling the hens and/or eggs;
- A copy of a valid facility use agreement between the applicant and Metropolitan Nashville public schools that allows the keeping of hens on the property;
- A signed plan that adequately addresses the handling, dispersal, and/or disposal of eggs approved, in writing, by the school.

This ordinance amends the last condition noted above to require that the written egg handling plan be submitted to, but not approved by, the school and adds a provision prohibiting eggs from being stored within the school cafeteria or kitchen without the written permission of the school principal or MNPS administration.

ORDINANCE NO. BL2012-296 (MATTHEWS & GILMORE) – This ordinance designates 14th Avenue North between Jefferson Street and Scovel Street as “Curtis Senior Lane”. Mr. Senior was known as “Scooby” on Clear Channel Radio/101.1 – The Beat’s “Dolewite and Scooby Show” in Nashville. Mr. Senior unexpectedly passed away in February 2012 at the age of 33.

On November 13, 2012, the council enacted Ordinance No. BL2012-262 to establish a procedure for the use of honorary street signs. That ordinance allows the council, by ordinance, to authorize and direct the department of public works to install honorary street signs beneath the official street name sign for any street identified on the official street and alley acceptance and maintenance map. Such honorary street signs are to be brown in color with white lettering. No honorary street sign can be installed honoring a living person, and signs for no more than five honorary street names may be publicly funded in each calendar year. After the fifth honorary street, the honorary signs must be privately funded. A member of council is not permitted to sponsor more than one ordinance in each calendar year naming an honorary street for which the costs of the signs are to be borne by the department of public works.

This ordinance does not officially rename this portion of 14th Avenue North. The designation as “Curtis Senior Lane” is only honorary.

ORDINANCE NO. BL2012-297 (MATTHEWS & LANGSTER) – This ordinance authorizes the industrial development board of the Metropolitan Government (IDB) to negotiate and accept payments in lieu of ad valorem taxes for the benefit of West End Summit Development, LLC, and certain affiliates of HCA Holdings, Inc. (HCA). A full analysis of this ordinance is included as part of the HCA economic development incentive analysis included at the end of this document.

ORDINANCE NO. BL2012-298 (MATTHEWS & BENNETT) – This ordinance approves an agreement among the public defender’s office, Equal Justice Works and the Southern Public Defender Training Center (SPDTC) for the Public Defender Corps (PDC) program. Pursuant to this agreement, the Davidson County public defender’s office will continue to serve as a host site for a national fellowship program. The public defender’s office has agreed to employ the “fellow” for three years. The SPDTC will provide \$10,000 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.

ORDINANCE NOS. BL2012-299 & BL2012-300 – These two ordinances abandon water and sewer facilities and/or easements no longer needed by the department of water and sewerage services. Future amendments to these ordinances may be approved by resolution. These ordinances have been approved by the planning commission.

Ordinance No. BL2012-299 (Todd & Potts) abandons two 15-foot water main easements on properties located at 925 and 929 Otter Creek Road.

Ordinance No. BL2012-300 (Moore & Potts) abandons the water and sewer easement rights that were retained by Ordinance No. O73-611 when a portion of the 9th Avenue South right-of-way was abandoned on property located at 921 South Douglas Avenue.

ANALYSIS OF HCA ECONOMIC DEVELOPMENT INCENTIVES

The mayor has proposed an economic development legislative package for consideration by the council for the benefit of HCA to incentivize the construction of two office buildings for the corporate relocation of several HCA affiliates. The incentives would consist of a property tax abatement for up to 20 years, a \$1 million one-time payment to cover relocation costs, and an annual payment of \$500 per employee, all of which could result in a potential benefit of \$65.9 million to HCA. In addition to the Metro incentives, the state will be providing an incentive grant of \$2.1 million.

West End Summit Development, LLC, plans to act as the developer of an office complex consisting of two separate towers and a 2,500 space multi-deck parking garage on 3.93 acres of property located at 1600 West End Avenue. In addition to the estimated 750,000 to 900,000 square feet of office space and the parking garage, the development is to include a 5,000 square foot fitness center, 35,000 square feet of retail, and a possible separate hotel. It is anticipated that HCA affiliates will initially occupy 500,000 square feet of office space in the new buildings.

HCA was founded in Nashville in 1968 and is the largest non-governmental hospital operator in the United States. HCA operates 163 hospitals and 110 freestanding surgery centers in 20 states and England, and employs close to 200,000 people. In 2011, HCA generated revenues of approximately \$30 billion and had a net income of \$2.465 billion.

The HCA affiliates involved in the corporate headquarters relocation include Parallon Business Solutions, LLC, Health Trust Purchasing Group, LP, and Sarah Cannon Research Institute, LLC (the "HCA company entities"). Parallon is a wholly-owned subsidiary of HCA whose five business units provide revenue cycle and business process expertise, workforce management solutions, supply chain services, information technology services, and purchasing power for healthcare providers. Parallon is currently headquartered in Williamson County. Health Trust Purchasing Group is a partially-owned subsidiary of HCA that functions as a group purchasing organization utilized by hospitals and other healthcare providers. Health Trust Purchasing Group provides its services in connection with Parallon. Sarah Cannon Research Institute is also a partially-owned subsidiary of HCA headquartered in Davidson County that provides oncology research services and serves 75,000 new patients per year. Parallon will be relocating 750 existing jobs from Williamson County and Sarah Cannon will be moving 200 jobs from its existing Davidson County location. It is anticipated that the relocation and expansion of the HCA company entities will create over 1,000 additional jobs within five years of the relocation, with an average salary in the \$80,000 to \$85,000 range.

Ordinance No. BL2012-297 (Matthews & Langster) authorizes the industrial development board of the Metropolitan Government (IDB) to negotiate and accept payments in lieu of ad valorem taxes for the benefit of West End Summit Development, LLC, and the HCA company entities. Pursuant to this ordinance, the council is delegating the authority to the IDB to negotiate and accept payments in lieu of real property taxes for the development over a 15-20 year period. State law permits local governments to delegate the authority to industrial development boards to enter into payment-in-lieu-of-tax (PILOT) agreements provided that the (continued on next page)

Ordinance No. BL2012-297 (continued)

payments are in furtherance of the public purpose of the board. PILOT agreements essentially provide tax abatements for real and/or personal property taxes the company would otherwise be required to pay to the Metropolitan Government. PILOT programs have been used by Metro in the past to provide incentives to large employers to create more job opportunities, and are subject to approval by the council. Some of the PILOT agreements from previous years include the 1995 relocation of Columbia/HCA Healthcare Corporation, Inc., Dell Computer Corporation, Omni Hotel (for the convention center headquarters hotel), LifePoint, and HCA-Information & Technology Services. The amount of tax abatements over the life of the existing PILOT agreements total approximately \$100 million. This does not include any economic incentive grants approved by the council.

According to the PILOT agreement incorporated into the ordinance, the developer will enter into an agreement with the IDB to lease the property who will in turn sublease 475,000 to 500,000 square feet of the space to the company entities. The agreement provides for a 100% real property tax abatement up to \$3 million per year for 15 years, with an additional five year extension as long as a company entity continues to occupy the office space. If extended for five years, the total potential amount of the tax abatement would be \$60 million over the life of the agreement. The tax abatement would take effect upon the execution of the PILOT lease with the IDB at the time the IDB issues bonds to finance the costs associated with the project, which is expected to be in 2015. The justification for the \$3,000,000 annual abatement is that this is the additional amount required for the construction of the new parking garage that would not be required if the companies built a new headquarters in Williamson County.

The property at 1600 West End Avenue currently generates property taxes in the amount of \$127,639.25 per year. If tax rates and property values remained the same, and the property remained undeveloped for 20 years, this property as-is would generate \$2,552,785 in property taxes over the next 20 years. Assuming the new buildings are a total of 850,000 square feet at a value of \$200 per square foot (\$170 million), the property taxes that would otherwise be owed on the project absent the PILOT would be \$3,168,800 at today's tax rates. Adding the 2,500 car parking garage at an estimated cost of \$45 million would generate an additional \$838,800 in property taxes for a total estimated annual tax bill of \$4,007,600, or \$80,152,000 over 20 years. Thus, Metro would still net \$17,599,215 in new real property taxes over the life of the PILOT after accounting for the \$60 million abatement, plus approximately \$2 million in additional personal property taxes.

If for some reason the property taxes that would otherwise be owed fall below \$3 million in a given year, HCA will have the ability to "bank" the difference and apply it against PILOT payments in future years. This means that HCA company entities would get the benefit of the full \$3 million abatement per year even if the property value falls or the tax rate is lowered.

The ordinance and agreement include provisions requiring that a certain number of employees work in Davidson County as a result of the project in order for the company entities to receive the full amount of the abatement. The job benchmarks are 1,000 FTEs (full-time equivalents) in 2016, 1,300 FTEs in 2017, and 1,500 FTEs in 2018 and subsequent years. Failure to meet these benchmarks would result in a \$300,000 reduction in the amount of the abatement for every shortfall of 100 incremental positions. Project-based employee positions and independent
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Ordinance No. BL2012-297 (continued)

contract personnel of the company entities would count toward the benchmark as long as their exclusive responsibility is to work with and support the activities of the company entities. However, those company employees that are currently working in Davidson County would not count toward the benchmark.

This is the first time a PILOT ordinance would require the creation and implementation of a small, minority, and disadvantaged business (DBE) program that would basically mirror the Music City Center DBE program. The program must have a DBE participation target of at least 20% of the project's hard construction costs. The developer will be required to make periodic reports regarding the DBE program to the council and the minority caucus.

The council approved a previous PILOT agreement for HCA in 1995, which was amended in 1997, after the merger of Columbia/HCA and HealthTrust, Inc. for the HCA headquarters property, as well as for Summit and Skyline hospitals. The previous PILOT agreement has expired and Metro is receiving the full amount of property taxes. HCA company entities collectively pay approximately \$7.5 million in taxes annually to Metro for their other properties in Davidson County, plus personal property taxes of approximately \$2.5 million. The council also approved a PILOT in April 2012 for the benefit of HCA – Information Technology & Services, Inc., to incentivize the construction of a new regional data center. The value of the April 2012 PILOT is anticipated to be \$3 million over the seven year term of the agreement. In addition, the contract between Metro and HCA for the transfer of the Lentz Health Center property and the construction of a new health center on HCA property approved by the council May 2011 contemplates HCA obtaining a 100% tax abatement in the form of a PILOT agreement for the first five years, and a 50% abatement for the next five years. The IDB authority to negotiate a PILOT agreement with HCA would be subject to approval of the council by ordinance.

Resolution No. RS2012-488 (Langster & Matthews) approves an economic and community development incentive grant to the industrial development board (IDB) for the benefit of HCA and its affiliates. In February 2011, the council enacted Substitute Ordinance No. BL2010-806 to allow incentive grants to be provided as a result of a corporate headquarters or technology firm relocation/expansion that will create at least 500 jobs over a five year period. This was an extension of the program enacted in 1999 for the benefit of Dell Corporation.

This resolution approves an economic and community development incentive grant in an amount of \$500 per FTE position (termed "incremental company entity positions") and approves the corresponding grant contract among Metro, the IDB, and the HCA company entities. The agreement spells out the types of qualifying employees in the same manner as the PILOT ordinance (BL2012-297). The term of the contract is for seven years, and HCA has the right to specify the date on which the grant period commences. HCA will be required to submit annual settlement statements to the department of finance for the grant.

Both the resolution and the grant agreement provide that the grant is contingent upon the annual appropriation of funds for this purpose by the council. However, the grant agreement also provides that the payment of the grant is a "legal requirement of the Metropolitan Government" and that the promised grant operated as an inducement to the HCA company entities to relocate their corporate headquarters to Nashville.

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Resolution No. RS2012-488 (continued)

If HCA meets its estimated hiring set forth in the PILOT agreement, the annual grant amount paid by Metro would be:

2016	\$500,000
2017	\$650,000
2018	\$750,000
2019	\$750,000
2020	\$750,000
2021	\$750,000
<u>2022</u>	<u>\$750,000</u>
Total	\$4,900,000

Substitute Resolution No. RS2012-489 (Langster & Matthews) appropriates \$1,050,000 in urban development action grant (UDAG) funds to the metropolitan development and housing agency (MDHA) for the benefit of the HCA company entities and for job recruitment. Under the federal UDAG program, funds were loaned to developers and repaid to MDHA instead of the federal government. MDHA is required by federal law to use the UDAG loan repayments in the "pocket of poverty" areas of the Metropolitan Government. In 1990, the council, by ordinance, authorized the use of the Capitol Mall UDAG funds for affordable housing and economic development activities, "all to be of benefit to the residents of the UDAG Pocket of Poverty in accordance with federal regulations." The Midtown area is technically within the pocket of poverty as identified in the Capitol Mall redevelopment plan.

This resolution appropriating the funds to MDHA for the benefit of HCA expressly provides that many of the anticipated jobs resulting from the corporate relocation of the HCA company entities are likely to be filled by individuals residing in the pocket of poverty. \$50,000 of these funds are to be used for job recruitment and job fairs to promote and increase the employment opportunities at the project to benefit residents living within Nashville's designated pocket of poverty.

The council has approved the use of UDAG funds for several other economic development projects in the past three years: \$310,000 for the Loews Hotels shared services center; \$300,000 for ServiceSource; and \$300,000 for the Nashville Entrepreneur Center.