

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: **December 6, 2005**

RE: **Analysis Report**

Balances As Of:	<u>11/30/05</u>	<u>12/1/04</u>
<u>GSD 4% RESERVE FUND</u>	*\$31,010,163	\$13,428,098
<u>CONTINGENCY ACCOUNTS</u>		
GSD	\$50,000	\$50,000
USD	\$50,000	\$50,000
<u>GENERAL FUND</u>		
GSD	Unavailable	Unavailable
USD	Unavailable	Unavailable
<u>GENERAL PURPOSE</u>		
<u>SCHOOL FUND</u>	Unavailable	Unavailable

* Assumes estimated revenues in fiscal year 2006 in the amount of \$21,037,500.

– RESOLUTIONS –

RESOLUTION NO. RS2005-1020 (MCCLENDON) – This resolution appropriates \$27,000 from the general fund reserve fund (4% fund) to the county clerk to purchase cash drawers and office chairs. Four percent funds may only be used for the purchase of equipment and repairs to buildings. A copy of the supporting information sheet required by Ordinance No. O86-1534 is attached to this analysis.

RESOLUTION NO. RS2005-1050 (JAMESON & LORING) – This resolution approves amendments to two agreements relating to the construction and operation of the district heating and cooling plant and energy distribution system, and for the purchase of fossil fuels to operate the system. In January 2002, the Council authorized the issuance of \$66.7 million in revenue bonds for the construction of the energy distribution system (the "EDS"), and approved agreements with Constellation Energy Source, Inc. for the design, construction, operation, and maintenance of the new energy generation facility ("the EGF"). Prior to the construction of this new system, the Thermal Transfer Corporation operated a system that converted solid waste through an incineration process into steam and chilled water for purposes of heating and cooling certain downtown buildings. The new system converts fossil fuels and electricity into steam and chilled water to heat and cool the buildings.

The original contract for design, construction, operation, and maintenance of the EGF with Constellation was for an initial term of 15 years, with a possible extension of three additional five-year periods. The estimated cost of construction was \$51,613,321, with possible additional costs in improving the existing distribution system. Pursuant to the contract, Constellation is paid a management fee of approximately \$3,551,770, which is increased annually based upon the CPI (inflation rate) but not in excess of 3 percent. Pursuant to the terms of the fuel purchase agreement, Constellation furnishes fuel to operate the EGF. The electricity used is obtained by Constellation from Nashville Electric Service (NES) and the natural gas used is to be obtained at or below the price charged by Nashville Gas Company. The contracts further provide that Metro has the obligation to meet shortfalls in the new system's revenues necessary to operate and maintain the system.

This resolution approves amendments to the management agreement and the fuel purchase agreement with Constellation. The majority of the changes in the agreements are technical corrections and clarifications. According to Metro's District Energy System (DES) liaison, a number of issues have been raised since the execution of the contracts that required clarifications. Although Metro and Constellation have had a working understanding regarding the clarifications, the contracts need to be officially amended to avoid disputes in the future. A detailed synopsis of the proposed changes to the contracts has been provided to members of council by Metro's bond counsel. Below is a summary of the modifications to the two contracts.

Amendment to the Management Agreement

As stated above, the majority of the corrections and modifications are technical in nature that will not have a negative affect on Metro or customers of the DES. The changes in the amended and restated agreement include the following:

- Constellation Energy Source, Inc. is now Constellation Energy Projects & Services Group, Inc. Therefore, the contract has been modified to reflect this name change.
- The contract is amended to reflect the fact that four customers of the old thermal system did not sign new contracts.

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RESOLUTION NO. RS2005-1050 (continued)

- The overdue rate is changed from 1 ½% over prime to 1% over prime.
- A new “service start-up period” has been added. The existing contract included a service start-up date, which was to take place after construction of the facility, and a service commencement date. The service start-up period allows Constellation to deliver steam and chilled water prior to the actual operating phase of the system after reliability tests are conducted, but they are not required to provide service until service commencement.
- The fixed operating costs have been reduced by \$150,000. This \$150,000 is now only to be paid by Metro if actual costs of maintaining the DES are incurred.
- The marketing incentive provisions were amended to allow Constellation to receive an incentive of 10% of each monthly invoice for the first three years of service if Washington Square, Public Square Parking, or BellSouth sign a customer contract after June 14, 2007.
- The contract adds a “reasonable efforts” standard to Constellation’s obligation to guard against damage to the EGF or injuries caused by third parties, rather than making Constellation liable for such damage or injury.

Amendment to the Fuel Purchase Agreement

- The contract is amended to reflect that Metro has entered into a contract with Atmos Energy for the purchase of natural gas, which is to extend through May 2006. Pursuant to the amended contract, the Atmos contract may be assigned to Constellation at the end of its term. Under this new amended agreement, Metro will be required to purchase fuel from Constellation rather than purchasing it on its own. Constellation will be required to use reasonable efforts to obtain natural gas at or below the price charged by Nashville Gas Company.
- The overdue rate is changed from 1 ½% over prime to 1% over prime.
- The contract is amended to allow Constellation to use price hedging to manage the risk of fluctuations in fuel prices. Price hedging is a practice where purchasers of commodities buy in advance at a fixed rate for later delivery to insure against unfavorable changes in price. The contract provides that a price hedge shall be entered into only by mutual agreement of Metro and Constellation.

The ordinance approving the initial contracts (Ordinance No. BL2001-921) provided that amendments to the agreements may be approved by a resolution adopted by the council.

RESOLUTION NO. RS2005-1078 (JAMESON) – This resolution sets a public hearing for an amendment to the Rutledge Hill redevelopment plan administered by the Metropolitan development and housing agency. This amendment to the plan is necessary for the Nashville Sounds proposal to move forward. An analysis of the amendment will be provided when the ordinance amending the plan (Ordinance No. BL2005-875) is on second reading. This resolution sets the hearing for Tuesday, December 20, 2005, at 7:00 p.m. in the council chamber to receive public input regarding the amendment to the redevelopment plan.

RESOLUTION NO. RS2005-1079 (JAMESON & MCCLENDON) – This resolution approves the waiver of benefit overpayments made to a pensioner in the Metro employee benefit system, which was caused by employee benefit board staff errors. The Metropolitan Code of Laws 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
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RESOLUTION NO. RS2005-1079 (continued)

amount of overpayment. The overpayments made to the pensioner total \$7,075.08. The employee benefit board has approved the waiver and it must be approved by the Metropolitan Council before it becomes final. This resolution is the result of an on-going program of the employee benefit board that reviews all pension payments to assure our pensioners are being paid the correct amount. If the pensioners are underpaid, the back payments are automatically paid without council approval.

RESOLUTION NOS. RS2005-1080 (MCCLENDON) – This resolution approves an annual grant in the amount of \$246,861.80 from the state department of labor and workforce development, under the provisions of the Workforce Investment Act of 1998, to provide funding to the Nashville career advancement center (NCAC) to prepare adults, youth, and dislocated workers for re-entry into the labor force, and to offer training to those facing serious barriers to productive employment. These are essentially federal pass-through funds that provide administration funding for NCAC. The term of the grant is from October 1, 2005, through June 30, 2007.

RESOLUTION NOS. RS2005-1081 & RS2005-1082 (MCCLENDON) – These two resolutions approve grants from the state department of labor and workforce development to provide funding to the Nashville career advancement center (NCAC) to prepare adults for re-entry into the labor force, and to offer training to those facing serious barriers to productive employment through the incumbent worker training program. This program enables Tennessee companies to receive state funds for training to enhance their employees' technological skills. The three corporations involved with this grant applied for this training through the state department of labor and workforce development. NCAC is the agency responsible for carrying out this training in the middle Tennessee area.

Resolution No. RS2005-1081 approves a grant in the amount of \$45,539 to provide financial software training to 16 workers at Bovis Lend Lease, Inc. The term of the grant is from September 27, 2005 through June 30, 2006.

Resolution No. RS2005-1082 approves a grant in the amount of \$84,728 to provide training to 253 workers at Quality Industries, and 80 workers at Thompson Machinery Commerce Corporation. The term of the grant is from September 30, 2005 through June 30, 2006, with a possible one year extension.

RESOLUTION NO. RS2005-1083 (FORKUM & MCCLENDON) – This resolution approves a grant in the amount of \$133,500 from the Bill and Melinda Gates Foundation to the Nashville public library to replace public access computers. These grant funds will be used to replace computers purchased with Gates Foundation funds in 2000. The Gates Foundation is awarding \$1,500 for each public access computer granted under the previous program. The application for this grant was approved by the council in October of this year.

RESOLUTION NO. RS2005-1084 (TYGARD) – This resolution appropriates \$50,000 from the contingency account of the general fund of the general services district to a reserve account for a historical preservation trust fund. The purpose of a historical preservation trust fund would be to
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RESOLUTION NO. RS2005-1084 (continued)

help acquire and preserve historic properties in Davidson County that are in a state of disrepair. This resolution would essentially tie up this \$50,000 amount to ensure that it would only be used for such a preservation trust in the event it is created prior to June 30, 2006. The resolution expressly provides that in the event the trust fund is created this fiscal year and raises matching funds in the amount of \$50,000 in private contributions, the council may adopt another resolution appropriating the funds from the reserve account to be used in furtherance of the purposes of the trust fund. In the event the trust fund is not created this fiscal year, the appropriation would lapse on June 30, 2006.

The \$50,000 contingency account has typically been reserved by the council for emergency purposes, although the council did appropriate funds from this account to various nonprofit organizations during the previous fiscal year. The director of finance has refused to sign this resolution as to the availability of funds, since this program is not of an emergency nature and the logistics involved in establishing such a fund would likely prevent its creation during this fiscal year. A copy of the finance director's letter is attached to this analysis.

RESOLUTION NO. RS2005-1085 (MCCLENDON) – This resolution accepts \$17,719 in compromise and settlement of the Metropolitan Government's claim against Robert G. Purple and Katherine L. Diel. On October 15, 2003, a school resource officer at Hillwood High School was struck by a vehicle driven by Hillwood student Robert Purple as the officer was directing traffic in the roadway. The student had just exited the school parking lot and was traveling eastbound on Hickory Valley Drive. At the time the student pulled out, the police officer was not in the roadway. The Metro officer then walked into the roadway with his back to the westbound traffic to motion for school buses to exit. According to Mr. Purple, there was a glare on the windshield and he did not see the officer until he was approximately twenty feet away. The impact from the collision threw the officer onto the hood of the car and he struck his head on the windshield. The officer filed a lawsuit against Robert Purple and his mother, Katherine Diel, who was the owner of the vehicle.

The officer's total medical bills were \$22,716, of which Metro has a subrogation interest in the amount of \$13,217. The majority of the medical bills are the result of a back surgery performed approximately one year after the accident. In addition to the medical bills, the Metropolitan Government has paid lost wages in the amount of \$8,950.76.

The officer testified in deposition that he knew from his training that he was not to turn his back on traffic. In addition, he was not wearing his reflective safety vest at the time of the accident. Further, the officer had received medical treatment for back problems in the year prior to the accident and had previously missed six weeks of work as a result of his back pain. Although the officer's doctor has opined that the car accident resulted in the surgery a year later, it is questionable whether a jury would deem the driver to be one hundred percent liable for the officer's injuries.

This case was mediated on October 20, 2005. As a result of the mediation, the defendants agreed to pay \$75,000 to settle all claims, with Metro agreeing to accept \$14,719 in satisfaction of its subrogation interests arising out of the medial and lost wage payments to the officer. The department of law recommends settling this claim for the amount agreed to as part of the mediation.

RESOLUTION NOS. RS2005-1086 & RS2005-1087 – These two resolutions approve the installation and maintenance of aerial encroachments over the public right-of-way. Ordinance No.

O87-1890 allows such aerial encroachments to be approved by resolution of the council rather than ordinance. 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 \$300,000 certificate of public liability insurance naming the Metropolitan Government as an insured party. These resolutions have been approved by the planning commission.

Resolution No. RS2005-1086 (Greer) authorizes The Shop Trust, LLC to install and maintain an awning above the sidewalk at 2600 12th Avenue South facing Montrose Avenue.

Resolution No. RS2005-1086 (Wallace) authorizes Vanderbilt University to install and maintain 432.85 feet of fiber optic aerial cable on existing utility poles from 111 21st Avenue South to 2015 Terrace Place.

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- BILLS ON SECOND READING -

ORDINANCE NO. BL2003-1 (WALLACE) – This ordinance amends the beer permit requirement provisions in the Metro Code of Laws to exempt restaurants that already have a state on-premises liquor consumption license from Metro’s minimum distance requirements to obtain a beer permit. The Code currently prevents a beer permit from being issued to an establishment located within 100 feet from a church, school, park, daycare, or one or two family residence. However, the council in July of 2003 enacted Substitute Ordinance No. BL2003-1353 establishing an exemption from the minimum distance requirements for restaurants located on property subject to a planned unit development (PUD) that already have a state on-premises liquor consumption license. Substitute Ordinance No. BL2003-1353 was essentially a compromise bill in an effort to take a step toward enabling restaurants with a state liquor license to obtain an on-sale beer permit without meeting the established distance requirements in the Code. Pursuant to state law, the Tennessee alcoholic beverage commission can take the applicant’s location into consideration when determining whether to grant a license for on-premises consumption, but no set distance requirements are included in the state law.

This ordinance would provide that restaurants possessing a valid license issued by the state alcoholic beverage commission for on-premises liquor consumption would have 180 days from the enactment of this ordinance to apply to the beer board for a permit and be exempted from the minimum distance requirements. After the 180 day window of opportunity, any restaurant possessing a valid state on-premises liquor consumption license desiring to be exempt from the minimum distance requirements could only do so if the council adopts a resolution approving the exemption. The council would have 60 days from the date that the council and the district councilmember are notified by the beer board that such an application requesting an exemption has been filed in which to adopt such a resolution. Failure by the council to approve or disapprove within 60 days would be deemed an approval by the council. This is similar to the Code provisions regarding the council’s approval of certain special exception uses such as landfills and waste transfer stations.

The Council Office has requested a list from the state alcoholic beverage commission of all liquor-by-the-drink establishments to compare with the list of restaurants that have a Metro beer permit. This information will be provided to the Council once it is available. There is a proposed amendment for this ordinance that would eliminate the 180 day window of opportunity, thus requiring Council approval of such establishments by resolution immediately upon enactment of the ordinance.

ORDINANCE NO. BL2005-580 (SUMMERS) – This ordinance amends the Metropolitan Code of Laws regarding ethical standards for members and prospective members of boards and commission of the Metropolitan Government. The Code currently provides ethical standards for board and commission members. Whenever a member has or is likely to have a conflict of interest in connection with a matter pending before the board or commission, the member is to either disqualify himself/herself from further action on the matter, or disclose the nature of the conflict, at which time he/she may proceed to take action on the matter. The Code currently does not restrict any person having a real or perceived conflict of interest from serving on any board or commission.

This ordinance would prohibit certain persons from being eligible to serve on a board or commission, and would provide for certain reporting requirements for members of boards and commissions. First, this ordinance would provide that no person shall be eligible to serve on a board or commission who (1) knows or should know that he/she has or is likely to have a financial interest or personal interest (continued on next page)

ORDINANCE NO. BL2005-580 (continued)

in a matter before the board; (2) is an employee of any business that routinely brings matters before the board or commission; or (3) is an employee of a print or broadcast news media business engaged in reporting actions taken by the Metropolitan Government. "Personal interest" under the ordinance means any interest arising from relationships with immediate family or business associations. "Financial interest" means any interest that yields a monetary or material benefit to the member, or to any person employing the member or someone in his/her immediate family. Second, this ordinance would amend the conflict of interest provisions in the Code to require board and commission members who know or should know they have a personal or financial interest in any matter pending before the board or commission, or who is an employee of any business bringing a matter before the commission, to publicly disclose the conflict in writing to the board or commission and to abstain from participating in the discussion or vote on the matter.

In addition, this ordinance would add certain disclosure requirements for members of boards and commissions. Under the ordinance, members would be required to disclose all positions of employment, every source of income in excess of \$5,000, any benefit received by a member's immediate family derived from transactions with Metro, and all ownership interests in real property. The Code currently does not include any disclosure requirements.

The Council Office is of the opinion that the provisions of this ordinance pertaining to the eligibility of persons to serve on boards and commissions created by the Metropolitan Charter are not enforceable. Section 11.102 of the Charter, under the General Provisions for Administrative Boards and Commissions chapter, has the heading "Qualifications for members." The only qualification stated in the section is that every member of a board or commission must have been a resident of Davidson County or had their principal place of business in Davidson County for at least one year. Section 11.101 of the Charter provides that the general provisions in the chapter apply to all administrative boards or commissions, unless another specific Charter provision pertaining to a particular board or commission provides otherwise. Since the additional qualifications contained in this ordinance exceed those contained in the Charter, a Charter amendment would be necessary in order for the provisions of this ordinance to be effective.

ORDINANCE NO. BL2005-841 (TYGARD) – This ordinance amends the Metropolitan Code of Laws provisions pertaining to ethical standards for members of council. This ordinance is an alternative to the proposed ordinance recommended by the ethics review task force (Substitute Ordinance No. BL2005-659), which is on third and final reading. This ordinance essentially takes several aspects of the ethics review task force's bill and places them into the current law.

The current ethical standards of conduct are based on conflicts of interests, although the term "conflict of interest" is not defined in the code. The code contains general conflict of interest provisions that require a member of council who has or is likely to have a conflict of interest in connection with a matter pending before the council to recuse him/herself from taking further action on the matter. The code also prohibits the solicitation or acceptance of gifts or benefits intended to influence a vote or given as a result of a vote. The code exempts gifts or benefits that are provided to all members of council. The current law further prohibits members of council from benefiting from contracts with the Metropolitan Government and from exerting influence as a councilmember, which would interfere with the performance or exercise of judgment of an officer or agency of the government. Members of council are also prohibited from representing any person or entity for compensation before any Metro legislative or administrative officer or agency of the Metropolitan Government.

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ORDINANCE NO. BL2005-841 (continued)

This ordinance incorporates the following concepts from Substitute Ordinance No. BL2005-659 into the existing ethics law for members of council:

- Members would be required to notify the vice mayor and the Metropolitan clerk in writing of conflicts they have regarding legislation pending before the council.
- The definition of benefit is specifically worded to include, but not be limited to, an advance, award, contract, compensation, deposit, favor, fee, honorarium, loan, payment, reward, or remuneration.
- Members would be prohibited from accepting or soliciting gifts for family members intended to influence their vote.
- Members would be prohibited from accepting food or admission tickets from any single source in excess of \$100 in any calendar year. The \$100 limitation would not apply to charity fundraising events.
- Members would be prohibited from accepting any food or beverage from an individual or organization that has had or is likely to have matters pending with the council.
- The same annual and quarterly disclosure requirements contained in Substitute Ordinance No. BL2005-659 are included in this ordinance.

The council office would point out this ordinance would amend the same section of the code as Substitute Ordinance No. BL2005-659 on third reading. Thus, this ordinance should be withdrawn if Ordinance BL2005-659 is adopted on third reading.

ORDINANCE NO. BL2005-845 (RYMAN, DOZIER & OTHERS) – This ordinance names the proposed plaza in front of the Metropolitan Courthouse the “Richard H. Fulton Plaza”. The Metro Code of Laws provides that no building of the Metropolitan Government may be named except pursuant to an ordinance enacted by the council. Richard H. Fulton was mayor of the Metropolitan Government from 1975 through 1987, after serving as a senator in the Tennessee General Assembly and a member of the U.S. House of Representatives. Mayor Fulton’s accomplishments include the construction of the Nashville Convention Center and Riverfront Park, the first use of tax increment financing through the Metropolitan Development and Housing Agency, the creation of the Arts Commission and the Historical Zoning Commission, the construction of nine new community centers, and the opening of 21 new parks.

Prior to the construction and renovation currently underway at the courthouse site, the property where this new plaza is to be built was maintained by the board of parks and recreation as a park facility. The council office is of the opinion that the Council does not have the legal authority under the Metropolitan Charter to name a park. Rather, this authority is vested solely with the board of parks and recreation.

ORDINANCE NO. BL2005-846 (WALLACE) – This ordinance declares Metropolitan Government-owned property located at 1822 Pearl Street to be surplus and authorizes the director of public property administration to sell the property in accordance with the standard procedures for the disposition of surplus property. The Metropolitan board of public education has determined that this property is no longer needed for school purposes. The council must approve the disposition of all property maintained by the school board before it can be sold. The proceeds of the sale will be credited to the unappropriated school fund.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2005-857 (WALLACE, JAMESON & WHITMORE) – This ordinance authorizes the mayor to submit the five year consolidated plan for housing and community development programs for the Metropolitan Government to the U.S. department of housing and urban development (HUD). This five year consolidated plan was prepared by the Metropolitan development and housing agency (MDHA) and is to be administered by MDHA. The plan includes the allocation of funds received from HUD for community development block grants (CDBG), the HOME investment partnerships program (HOME), the emergency shelter grant program (ESG), and the housing opportunities for persons with AIDS (HOPWA).

Any property that may need to be acquired under any of these programs may only be acquired for public use and approved by ordinance, unless the owner consents in writing to sell the property for the program. The exercise of the power of eminent domain under the development plan is expressly reserved for the Metropolitan Council, except in the case of open projects approved by the council in accordance with state law. Additionally, all requested program expenditures must be approved by resolution of the Metropolitan Council.

CDBG funds are based on new entitlement funding in the amount of \$5,300,000, with program income of \$600,000 during the coming year. These CDBG funds are 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 for planning initiatives in the following three commercial district target areas: Murfreesboro Road, 8th and Lafayette, and Clarksville Pike. Maps that set out the boundaries for all of the NSAs and commercial district target areas are on file with MDHA. The greatest portion of CDBG funds are used for housing rehabilitation, infill housing related projects, and neighborhood-related public facilities.

HOME funds are to provide a mixture of owner-occupied and rental rehabilitation, new housing ownership programs, new multi-family housing opportunities, down payment assistance and housing assistance. A required twenty-five percent local match must be provided from repayments of urban development action grants (UDAG). UDAGs are federal loans made to qualifying programs, essentially in the downtown area, which are repaid to the Metropolitan Government to be expended in approved programs that target persons living in pockets of poverty.

ESG funds are allocated to local homeless shelter providers to help cover operational expenses, rehabilitation, prevention, and essential services. Local matching funds required under this program must be provided by the local non-profits that participate in the program as subgrantees.

The **HOPWA** program provides housing related assistance for low-income persons with AIDS and their families.

Attached at the end of this analysis are the program allocations under these various programs beginning April 1, 2006, through March 31, 2009. These federal programs funded by HUD have been in existence for over 30 years.

ORDINANCE NO. BL2005-858 (COLE, RYMAN & OTHERS) – This ordinance amends the Metropolitan Code of Laws to place additional restrictions and requirements regarding the ability of the Metropolitan Government to privatize government services. The Metro code currently requires all privatization contracts with a value in excess of \$100,000, or one that would result in the loss of (continued on next page)

ORDINANCE NO. BL2005-858 (continued)

more than two Metro employees to be approved by resolution of the council. Contracts for professional services do not have to be approved by council, regardless of the dollar amount involved.

This ordinance would require these privatization contracts to be approved by ordinance, rather than resolution. In addition, it expands the definition of privatization contracts to include contracts that would (1) result in the termination or relocation of one or more Metro employee; or (2) would eliminate any vacant position funded in the operating budget to provide such governmental service; or (3) has a value in excess of \$100,000 (other than contracts for professional services). Further, no person or business would be eligible to contract for the privatization of government services if they provided consulting services to Metro in the previous year.

Finally, the ordinance places additional conditions that must be satisfied prior to contracts for the privatization of government services becoming effective. First, all Metro employees who were providing such services must be offered employment with the Metropolitan Government at the same or greater level of pay. Second, a comprehensive written justification and cost-benefit analysis must be filed with the council at the time the ordinance approving the privatization contract is filed.

ORDINANCE NO. BL2005-859 (COLE & JAMESON) – This ordinance amends the Metropolitan Code of Laws to prohibit the hoarding of animals. This ordinance would make it unlawful to possess more than five “companion animals” if the owner does not properly care for the animals. The ordinance defines “companion animal” to include dogs, cats, rabbits, guinea pigs, hamsters, rats, mice, ferrets, birds, reptiles, amphibians, and other species that a reasonable person would consider to be a pet. Proper care would include adequate food and water at least once a day, adequate medical treatment, and adequate shelter consisting of a minimum structure with a roof and three sides with room for the animal to stand up, lie down, and turn around.

This ordinance also adds some penalty provisions for violation of the ordinance. First, the ordinance states that a person in violation of this ordinance is “guilty of a misdemeanor”. The council office would point out that the word “misdemeanor” implies that this a criminal offense, and only the state legislature has the authority to designate an act a crime. A violation of the Metropolitan code is a civil offense punishable only by a maximum fine of fifty dollars, pursuant to state constitutional limitations. This ordinance also purportedly gives authority to the general sessions court to impose penalties in addition to a fifty dollar fine. The ordinance provides that the court may order a violator to do any or all of the following:

1. Prohibit the person from owning companion animals for a period of time the court deems reasonable.
2. Require the person to participate in animal cruelty prevention and education programs.
3. Require the person to undergo a mental health evaluation and comply with any recommendations resulting from the evaluation.
4. Forfeit all animals that are the basis of the conviction.
5. Sterilize the companion animals. (Sterilization would be mandatory after the second conviction.)
6. Pay appropriate fees and fines.

ORDINANCE NO. BL2005-860 (DOZIER, BRADLEY & MCCLENDON) – This ordinance amends the Metropolitan Code of Laws to prohibit mobile food vendors from operating in permanent locations.

Currently mobile food vendors, such as mobile kitchens and trailers that prepare and sell food, are treated as restaurants by the health department and inspected as such.

This ordinance was prepared and filed after two extensive inspection periods by the health department of 31 mobile food vendors in Davidson County. The results of the health inspections evidenced a large number of critical health violations, which potentially poses a serious risk to employees and customers alike. The average score for these establishments was a 67 out of 100, compared to an average score of 83 for restaurants as a whole. In addition, only 45% of the mobile food vendors inspected were in compliance with Metro water services and only 29% were in compliance with the fire marshal.

This ordinance defines a mobile food vendor as any vehicle mounted food establishment in which food is prepared and sold. Vendors that sell prepackaged food are not considered mobile food vendors for purposes of this ordinance. The ordinance would prohibit mobile food vendors from operating in Davidson County except at temporary events for no more than 14 consecutive days. Temporary events would include special events for which a permit has been issued by the mayor's office of film and special events, and charitable events held for the benefit of nonprofits. All temporary mobile food establishments would be required to obtain a permit from the health department and give fourteen days advanced notice to the department of the locations at which they will be operating. The operators of these temporary establishments would also be required to give the health department, Metro water services, the department of codes administration, and the fire marshal access to inspect the unit. If violations are not corrected within the timeframe specified by the regulatory agency, the establishment must cease operations until authorized to resume.

The provisions of this ordinance would not apply to street vendors, such as downtown hot dog carts, that are licensed by the county clerk pursuant to Chapter 13.08 of the Metro code.

ORDINANCE NO. BL2005-861 (CRAFTON) – This ordinance amends the building code provisions of the Metro Code of Laws to prohibit the issuance of a building permit if the applicant or property owner has violated a stop work order within the past year. The building code provides that the director of codes administration may issue a stop work order in writing if work on any building or structure is being done contrary to the building code or in a dangerous or unsafe manner. When an emergency exists, the director is not required to give written notice of the stop work order. This ordinance would prohibit any applicant from obtaining a building permit if they have been found by a court to have violated a stop work order within the past twelve months.

ORDINANCE NO. BL2005-862 AND BL2005-863 (MURRAY) – These two ordinances amend the building code to place additional requirements in order to obtain a demolition permit for a historic structure. These ordinances were drafted in response to the actions surrounding the demolition of the Evergreen home. State law provides that no residential structure may be demolished without approval by the local legislative body if the structure was (1) constructed before 1865; (2) is repairable at a reasonable cost; and (3) the structure has a historical significance besides age itself. These two ordinances would add a procedure to the code for determining whether a structure falls within the state law provisions requiring council approval prior to demolition, and would require that the demolition of all historic structures first be approved by the executive director of the historic commission.

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ORDINANCE NO. BL2005-862 AND BL2005-863 (continued)

Ordinance No. BL2005-862 would require an applicant for a demolition permit for a structure constructed prior to 1865 to present a report to the director of codes administration and the executive director of the historical commission prepared by a qualified historic restoration consultant that states the following:

- The qualifications of the person making the report. (The consultant must be a professionally licensed architect or general contractor with a specialty in historic buildings.)
- The structural condition of the building to be demolished.
- An estimated cost to repair the structure.
- A valuation from a qualified historic properties real estate appraiser of the structure to be demolished.

Upon receipt of the report, the historic zoning commission will make a determination at a public meeting as to whether the structure meets the criteria set out in the state law described above. If the structure does meet the criteria, the commission will initiate legislation for consideration by the council.

Ordinance No. BL2005-863 would require that the executive director of the historical commission approve a demolition permit prior to its issuance for a structure that is eligible for listing on the National Register of Historic Places, or meets the state law criteria discussed above and is not included as part of a historic overlay district. The director of the historical commission must take action within 90 days of the permit application.

ORDINANCE NO. BL2005-866 (DREAD) – This ordinance amends the Metropolitan Code of Laws pertaining to the notice requirements for holders of caterer’s beer permits. In February 2005, the council enacted Ordinance No. BL2005-498, which created a separate beer permit for caterers. This ordinance was modeled after the state law provisions that allow caterers to obtain a caterer’s license for the sale of alcoholic beverages if they maintain a permanent catering hall (i.e., a restaurant). Ordinance No. BL2005-498 allows a holder of a state caterer’s liquor license to obtain a Metro caterer’s beer permit. The ordinance requires caterer’s permit holders to give advanced notice to the beer board of the date, time, and location of each catered event at which beer is to be served. This ordinance clarifies that the notice is to be either written notice by mail or facsimile not later than one business day prior to each event.

ORDINANCE NO. BL2005-867 (TOLER) – This ordinance amends the water/sewer title of the Metropolitan Code of Laws to eliminate the requirement that customers of the department of water and sewerage services sign a written contract to obtain service. The ordinance would also allow customers to cancel service upon oral notice. The Code currently provides that after a property owner has installed a water and/or sewer line at the owner’s expense, and such line has been approved by the department, the customer must make a written contract with the department in order to obtain service. The Code further provides that service is to continue until the customer orders in writing that service be discontinued, or the customer fails to comply with the department’s regulations. This ordinance would eliminate the written contract and written notice provisions. Rather, the customer’s act of orally requesting service will constitute an acceptance of a contract for service. A copy of the standard terms of service would then be mailed to the customer with their first bill.

ORDINANCE NO. BL2005-868 (SHULMAN, JAMESON & MCCLENDON) – This ordinance permits a change in control of MCI metro Access Transmission Services LLC resulting from the plan of merger between MCI, Inc. (MCI), Eli Acquisition LLC (Eli) and Verizon Communications, Inc. (Verizon). In

October 1994, the Council approved five ordinances that granted franchises to five different companies to operate telecommunication systems using fiber optic cable. The five franchises were primarily for the purpose of serving hotels, motels, hospitals, and office buildings. One of these franchises was granted to Access Transmission Services (ATS), Inc. MCImetro Access Transmission Services LLC, which is a wholly owned subsidiary of MCI, Inc., is a successor to ATS by change. MCI has reached a merger agreement with Eli and Verizon, which will result in a change of control of MCImetro Access Transmission Services LLC for purposes of the franchise granted by Metro.

The Metropolitan Code of Laws provides that no telecommunications franchise may be transferred without the written permission of the Metropolitan Government by ordinance of the council. According to the ordinance, MCImetro Access Transmission Services has agreed to fulfill all of the obligations of the existing franchise, although no additional written documentation has been filed.

The council office would point out that the new franchise holder apparently bypassed the department of law and the director of finance in preparing and filing this ordinance. The telecommunications franchise provisions in the code require the council to approve franchise transfers in order to protect the Metropolitan Government. In September 2005, the Council approved a similar ordinance approving the transfer of a telecommunications franchise from ICG Access Services, Inc. to Xspedius Communications. The Xspedius ordinance conditioned approval of the franchise transfer upon written confirmation that Xspedius will fulfill all obligations imposed by the franchise and incorporated a new \$250,000 surety bond as required by the Metro code. Further, the Xspedius ordinance was submitted to the director of finance prior to its filing for certification as to availability of funds, since the Metropolitan Government relies on the revenue generated from these franchise fees to balance the government's operating budget. This ordinance does not incorporate a new franchise bond in the name of the new entity, nor was the ordinance submitted to the director of finance. In addition, the ordinance was not submitted to the department of law for review prior to its filing.

Although this ordinance likely has no fiscal impact in the Metropolitan Government, the council office is of the opinion that the ordinance should be signed by the director of finance as to the availability of funds. In addition, the council office recommends that this ordinance be amended to condition the franchise transfer upon the written confirmation of the new franchise holder that it will abide by the terms of the franchise. The currently language of the ordinance simply states that the transfer is conditioned "with the understanding" that the obligations of the franchise will be satisfied. A copy of the performance bond should also be filed with the clerk prior the ordinance's adoption on third reading.

ORDINANCE NO. BL2005-869 (COLE & FORKUM) – This ordinance authorizes the director of public property administration to accept an easement for use as part of the Cumberland River greenway. The easement is being granted by the U.S. Army Corps of Engineers for the purpose of constructing a pedestrian foot bridge crossing the Cumberland River at the Cheatham Lock and Dam.

This ordinance has been approved by the planning commission and the board of parks and recreation.

ORDINANCE NO. BL2005-870 (BRADLEY & TOLER) – This ordinance authorizes the director of public property administration to acquire easements, by negotiation or condemnation, in connection with the extension of Smith Springs Parkway from Paddington Way to Arvington Way. This ordinance would essentially allow the condemnation of an 80-foot wide section of right-of-way consisting of 1.8 total acres for purposes of constructing and maintaining the roadway.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2005-871 (TOLER & TUCKER) – This ordinance authorizes the mayor to enter into a supplemental utility relocation contract with the state department of transportation (TDOT) in connection with the state route 45 bridge over Whites Creek. The original utility relocation contract for this project, which was entered into in April 2004, was at a cost of \$3,140. This contract supplement increases the amount to be paid by Metro to \$54,734 to cover additional installation expenses for fill soil, a temporary traffic signal system, and an additional water and sewer line relocation. This amount is to be paid from the water and sewer extension and replacement fund.

ORDINANCE NO. BL2005-872 (HAUSSER) – This ordinance closes a portion of Alley No. 912 from 30th Avenue South southwest to a dead end. This closure has been requested by ETI Corporation to allow for curb cut modifications and improvements for the proposed First Tennessee Bank at 3011 West End Avenue. There is no future need for this section of the alley for right-of-way purposes. The Metropolitan Government will retain all easements. Consent of affected property owners is on file with the department of public works. This ordinance has been approved by the planning commission and traffic and parking commission.

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- BILLS ON THIRD READING -

SUBSTITUTE ORDINANCE NO. BL2005-659 (BRILEY, JAMESON & OTHERS) - This substitute ordinance, as amended, amends the Metropolitan Code of Laws by repealing the existing "Standards for Ethical Conduct" for members of council and replacing the provisions with new "Standards of Conduct". This ordinance is the final product of the ethics review task force, which was created by the council in February 2004 to review the current ethics laws and to make recommendations regarding changes to the laws. The task force has recommended that this ordinance be enacted into law.

As stated above, the code currently contains provisions pertaining to ethical conduct of members of council. The code contains general conflict of interest provisions that require a member of council who has or is likely to have a conflict of interest in connection with a matter pending before the council to recuse him/herself from taking further action on the matter. The code also prohibits the solicitation or acceptance of gifts or benefits intended to influence a vote or given as a result of a vote. The code exempts gifts or benefits that are provided to all members of council. The current law further prohibits members of council from benefiting from contracts with the Metropolitan Government and from exerting influence as a council member, which would interfere with the performance or exercise of judgment of an officer or agency of the government. Members of council are also prohibited from representing any person or entity for compensation before any Metro legislative or administrative officer or agency of the Metropolitan Government.

The ordinance would substitute the current ethics laws applicable to members of council with new standards of conduct. The ordinance contains some standards that are similar to the current ethics laws, such as a prohibition on soliciting or accepting benefits that might reasonably tend to influence a member to act improperly or to influence a vote, and a prohibition on using council positions improperly to secure unwarranted privileges. In addition, this ordinance includes a blanket prohibition on members of council accepting "anything of value", which includes money, gifts, benefits, advances, etc. The ordinance does contain exceptions not considered "anything of value", including the following: (1) compensation paid by an employer; (2) fees earned from outside employment; (3) meals, gifts and other nominal benefits furnished by an employer; and (4) lawful campaign contributions. This ordinance would also prohibit members of council from using Metropolitan Government property or information for personal use, or from providing services for compensation to a person or entity having business before the Metropolitan Government unless it is the member's primary source of income and he/she discloses the interest. Further, members of council would be prohibited from accepting promotional items in excess of \$25, and meals, tickets, admissions to events, or travel expenses in excess of \$100 from a single source in a given year. The ordinance also expressly prohibits the acceptance of meals provided to the entire council by persons or organizations that have had or are likely to have matters pending with the council.

Probably the most significant aspects of this ordinance are the required disclosure provisions. The current ethics law does not contain any disclosure requirements for members of council, although Members are required to file annual campaign finance disclosures with the election commission pursuant to state election law. This ordinance would require members of council to file annual disclosure statements and quarterly benefit reports. The council office would be required to assist in the preparation of the reports, although the individual council members would remain responsible for the validity of all information provided. The annual disclosure statement would include the following information:

(continued on next page)

SUBSTITUTE ORDINANCE NO. BL2005-659 (continued)

1. Sources of income for members of council. This only requires the disclosure of the source of income, not the amount of income received. Attorneys or doctors whose source of income is their practice would be required to name the practice and any individual client that accounts for 15% or more of the individual's income, unless such disclosure would violate applicable laws and/or rules of professional conduct. If the individual relies on the protections allowing them to refrain from disclosing client names, that individual would be required to file a certification as to the number of clients the individual has not disclosed and the laws or rules the individual relied upon. In addition, self-employed members would not be required to disclose client/customers names if requested not to, but would have to state that to the best of their knowledge the client/customer has no business pending with the council during the next 30 days.
2. Financial interest for members of council of 5% or more in any business with offices in Davidson County.
3. Councilmember's ownership of property located in Davidson County.
4. Councilmember's position with any for-profit or non-profit entity, labor group, or educational or other institution, regardless of whether income is received for such position. This would include membership on boards of charitable organizations.
5. Financial interests in any litigation involving the Metropolitan Government.
6. Debts in excess of \$5,000 owed to any one creditor, excluding debts owned to family members or established financial institutions in the ordinary course of business (i.e. car loans, mortgages, etc.).

This substitute ordinance contains a 60-day delayed implementation provision for the filing of the first annual disclosure statement after the ordinance is enacted. This annual disclosure statement must be amended within 30 days of the occurrence of any material change to the disclosures. In addition, members of council having a direct or indirect personal interest in any legislation would be required to notify the vice mayor and the clerk as far in advance as reasonably possible. Members of council would also be required to file a monthly benefit reporting statement listing all benefits received, including meals, admissions, tickets to events, and travel expenses. Further, members of council would be required to provide the Metropolitan clerk with a copy of their campaign disclosures filed with the election commission.

This ordinance would also abolish the council board of ethical conduct and replace it with the "council board of conduct". This board would have the same functions as the current board, and will have the same membership composition as the current board of ethical conduct. The complaint and investigation procedures are essentially the same as the current procedures, but include detailed hearing procedures to be followed by the board in the event the board calls a hearing on the complaint.

The council office would remind the council that this ordinance is the result of months of meetings by the ethics review task force, which was selected by the council and included the director of the council office as a member. The task force held two public hearings for input from citizens and councilmembers prior to submitting the final version of the proposed ordinance.

ORDINANCE NO. BL2005-836 (NEIGHBORS, MCCLENDON & OTHERS) – This ordinance establishes the property tax relief program for low-income elderly residents of the Metropolitan Government for fiscal year 2005-2006. State law allows county legislative bodies to appropriate funds (continued on next page)

ORDINANCE NO. BL2005-836 (continued)

for such programs and establish guidelines for participation in the program and the disbursement of such funds. The council appropriated \$700,000 in the current fiscal year's operating budget for a property tax relief program for the elderly. This ordinance authorizes the Metropolitan trustee to establish rules and procedures for implementation of the program and directs the trustee to disburse the funds accordingly to all eligible taxpayers. All persons who qualify for the state property tax relief program and whose income does not exceed \$12,980 annually will qualify for this program. As this budgetary appropriation is non-recurring funding, this program will expire on June 30, 2006.

ORDINANCE NO. BL2005-839 (TYGARD & FORKUM) – This ordinance authorizes the director of public property and the director of parks and recreation to accept a perpetual conservation easement for use in connection with the development of the Harpeth River greenway adjacent to Old Harding Pike. This easement is being granted by Calvin W. Fite, Jr., Ramona W. Fite, and Julian T. Fite at no cost to the Metropolitan Government. This easement acceptance consists of a 20-foot wide permanent conservation easement and a 15-foot wide temporary construction easement to allow for the construction of a pathway. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2005-840 (DOZIER) – This ordinance approves a lease agreement between the Metropolitan Government and Greensboro I, L.P. for property located at 804 Second Avenue North to be used as office space by the Metropolitan police department. Metro is seeking to lease approximately 7,200 square feet of office space for the police department's domestic violence division to be used for administrative uses and counseling services. The term of the lease is for five years, with a possible five-year extension upon the agreement of both parties. The monthly rental payments pursuant to the lease are as follows:

- Year 1: \$10,334 per month
- Year 2: \$10,497 per month
- Year 3: \$10,660 per month
- Year 4: \$10,823 per month
- Year 5: \$10,986 per month

The above rental amount is to include base rent for the property, taxes, insurance, tenant improvements, common area maintenance, and utilities. In the event the option on the five-year extension is exercised, the rental payments will be as follows:

- Year 6: \$7,426 per month
- Year 7: \$7,584 per month
- Year 8: \$7,742 per month
- Year 9: \$7,900 per month
- Year 10: \$8,058 per month

Greensboro I, LP (the "lessor") will be responsible for maintenance and repair of the building, roof, electrical wiring, light fixtures, and the plumbing and HVAC systems. In addition, the lessor will provide garbage pickup, utilities, ancillary parking at the corner of Ash Street and Third Avenue, nine assigned parking spaces in the front of the leased premises, and three parking spaces in the rear of the premises. Further, the lessor will be required to make certain tenant improvements in accordance with Metro's specifications.

This lease may be terminated by Metro upon 90 days written notice, provided that Metro will be required to pay \$89.75 per day for the remaining days of the lease term and \$40.12 per day for the ancillary parking. This lease has been approved by the planning commission.

ORDINANCE NO. BL2005-843 (MCCLENDON & JAMESON) – This ordinance amends the employee benefit section of the Metropolitan Code of Laws to extend the “in-line-of-duty medical treatment network” pilot program. In December 2003, the Council enacted Ordinance No. BL2003-58 to authorize the “in-line-of-duty medical treatment network” for a two-year period ending January 1, 2006. At the time Ordinance NO. BL2003-58 was enacted, the code provided that the employee benefit board was authorized to establish a panel of pre-approved medical providers to furnish treatment for in-line-of-duty injuries to be known as the “in-line-of-duty medical treatment network”, if the employee benefit board determined it was financially feasible to do so. The Code provided that once such a network is established, medical care benefits (health insurance) would no longer cover work-related injuries, but such injuries would be covered by Metro through the network instead. This provision is similar to the workers’ compensation laws applicable to private employers whereby an employer may furnish an injured employee with a list of three or more doctors from which the employee may select for treatment.

Ordinance No. BL2003-58 provided that at the end of the two-year pilot period, the program will terminate and the benefit board will determine whether to continue the network. The employee benefit board has voted to extend the pilot program for an additional year. If the network is continued after the three-year pilot period, then health insurance benefits will no longer cover work-related injuries.

ORDINANCE NO. BL2005-844 (TOLER) – This ordinance amends the Metropolitan Code of Laws provisions that prohibit cross connections to the public drinking water supply. The current law prohibits cross connections for any purpose whatsoever. A cross connection is any connection between the Metro water supply system and any other system that could cause a backflow into Metro’s system. This ordinance updates our code provisions to be in compliance with state and federal law. The Safe Drinking Water Act requires that our cross connection provisions reference our cross connection control plan. This ordinance authorizes the department of water and sewerage services to develop and administer a cross connection control plan, and provides that a copy of the plan is to be on file with the Metropolitan clerk. This ordinance prohibits cross connections except with the written consent of Metro water services where such cross connection is consistent with the criteria in the plan.

ORDINANCE NO. BL2005-847 (HART & TOLER) – This ordinance changes the name of McIver Street, between Gallatin Pike and Burrus Street, to “Hunters Meadow Lane”. This name change has been approved by the planning commission and referred to the emergency communications district.

ORDINANCE NO. BL2005-848 (TOLER) – This ordinance accepts an easement for property located at 2004 Pittway Drive to allow for the construction of a stormwater project. This easement is being donated by Culligan Water Properties, LLC at no cost to the Metropolitan Government in order that the stormwater project may be completed.

ORDINANCE NO. BL2005-849 (TOLER) – This ordinance abandons a twenty-foot drainage easement, and accepts a replacement twenty-foot easement, at Darsino’s Retail Center located at 6601 Sugar Valley Drive. The easement to be abandoned is no longer needed by the department of water and sewerage services. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2005-850 (ADKINS & TOLER) – This ordinance authorizes the director of public property administration to acquire seven easements by negotiation or condemnation for the purpose of constructing a new 36-inch water main at Powell Avenue. Easements are to be acquired for the following properties:

- 3332 and 4061 Powell Avenue
- Powell Avenue, unnumbered
- Sidco Drive, unnumbered
- 3664 and 4633 Trousdale Drive
- 648 Grassmere Drive

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2005-851 (TOLER) – This ordinance authorizes the Metropolitan Government to enter into a participation agreement with Yazdian Construction Co. to provide sewer service to a development in Williamson County known as Nolensville Commercial. Yazdian Construction Co. has agreed to contribute \$8,000 for a total of four units of flow. These funds will be deposited into the water and sewer extension and replacement fund.

ORDINANCE NOS. BL2005-852 & BL2005-853 – These two ordinances accept funds from private developers to fund traffic infrastructure improvements. These funds will be deposited into a fund designated by the director of finance as a contribution towards the improvements.

Ordinance No. BL2005-852 (Gilmore & Toler) accepts \$34,370 from Tyler Ring for traffic infrastructure improvements at Cato Road necessitated by the Creekside Trails development.

Ordinance No. BL2005-853 (Toler) accepts \$40,000 from Lenox Village for traffic infrastructure improvements at Holt Road.

ORDINANCE NOS. BL2005-854 & BL2005-855 – These two ordinances accept easements to allow for the completion of multiple stormwater projects. These easements are being donated by the property owners at no cost to the Metropolitan government in order that the stormwater projects may be completed. These two ordinances have been approved by the planning commission.

Ordinance No. BL2005-854 (Forkum, Coleman & Others) authorizes the acceptance of easements for the following properties:

- 20 Culvert Street
- 3410 Gallatin Pike
- 11 Burton Hills Boulevard
- 4131 Andrew Jackson Parkway
- 936 Firestone Parkway
- 417 Myatt Drive
- 4108 Belmont Boulevard
- 3109 Granny White Pike
- 748 Wedgewood Avenue

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ORDINANCE NOS. BL2005-854 & BL2005-855 (continued)

Ordinance No. BL2005-855 (Hausser, Ryman & Others) authorizes the acceptance of easements for the following properties:

- 586 Tulip Grove Road
- 588 Tulip Grove Road
- Tulip Grove Road, unnumbered
- 8300 Highway 70
- 400 Oakbluff Lane
- 1221 18th Avenue South
- 1382 Rural Hill Road
- 2610 Grandview Avenue
- 2606 Grandview Avenue
- 601 Marriott Drive
- 4300 Hillsboro Pike
- 6401 Harding Pike
- 15th Avenue South, unnumbered

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