MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: **January 17, 2006**

RE: **Analysis Report**

Balances As Of:	**1/11/06**	**1/12/05**
GSD 4% RESERVE FUND	***$22,356,763**	$13,333,475
CONTINGENCY ACCOUNTS		
GSD	$50,000	$4,000
USD	$50,000	$50,000
GENERAL FUND		
GSD	Unavailable	$28,818,707
USD	Unavailable	$5,003,020
GENERAL PURPOSE SCHOOL FUND	Unavailable	$25,250,424

* Assumes estimated revenues in fiscal year 2006 in the amount of $16,397,447

– RESOLUTIONS –

RESOLUTION NO. RS2005-1108 (MCCLENDON) – This resolution appropriates $117,500 from the general fund reserve fund (4% fund) to the emergency communications center for the replacement of chairs and furniture. Four percent funds may only be used for the purchase of equipment and repairs to buildings. This project was included as part of the mayor's capital spending plan, but held until adequate funding was in place. The balance in the general fund reserve fund as of January 11, 2006, was $22,356,763. This assumes unrealized revenue for fiscal year 2006 in the amount of $16,397,447. The resolution provides that "The Director of Finance may schedule acquisitions authorized herein to ensure an appropriate balance in the Fund." A copy of the supporting information sheet required by Ordinance No. O86-1534 is attached to this analysis.

RESOLUTION NO. RS2005-1114 (DOZIER & MCCLENDON) – This resolution approves a grant in the amount of $1,223,650 from the U.S. department of homeland security to the Nashville fire department for a firefighter wellness program. Prior to fiscal year 2004, the fire department offered annual medical physicals to firefighters. However, this program was eliminated as a result of budget reductions. These federal grant funds will be used for a comprehensive wellness program consisting of the following: (1) providing annual physicals to all 1,093 firefighters; (2) training 120 personnel as "peer fitness trainers"; (3) contracting with the health department to conduct nutrition classes; (4) administering a computerized annual personal wellness profile; and (5) purchasing aerobic exercise equipment for each fire station. A required match of $305,912 will be provided from the operating budget of the fire department.

RESOLUTION NO. RS2006-1140 (MCCLENDON) – This resolution approves the assignment of the Renaissance Hotel lease, and accepts the sum of $2,342,000 in anticipated profits from the assignment. The Metropolitan Government is the owner of the land underneath the downtown Renaissance Hotel, which is currently leased to RHOC Nashville Hotel, LLC. The tenant actually owns the hotel structure on top of the land. The hotel is managed by Renaissance Hotel Operating Company, LLC, a subsidiary of Marriott.

In 1984, the council approved an initial lease agreement for the hotel in conjunction with the construction of the Convention Center. The lease was amended and restated in 1989, with the approval of the council. The lease was for a period of thirty years, with seven ten-year renewals. Under the initial lease, Metro was to receive $500,000 a year in rent, plus twenty percent of the net profits of the hotel's operation. The lease further provides that the Metropolitan Government is to receive a twenty percent share of the anticipated profit from any assignment of the lease.

The assets of RHOC Nashville Hotel, LLC were purchased by Marriott International, Inc. in 2005. Marriott's current business model does not include ownership of the hotels it manages, and it plans to sell its ownership interest in the hotel to a third party. In keeping with the terms of the lease, Marriott has requested Metro's consent to assign the lease to a new tenant. This new tenant will be a wholly-owned subsidiary of Highland Hospitality Corporation. The current manager (Renaissance Hotel Operating Company, LLC) will continue to operate the hotel.

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RESOLUTION NO. RS2006-1140 (continued)

This resolution provides for the council's consent to the assignment of the lease. The resolution also accepts $2,342,000 as Metro's twenty percent share of the profit from the assignment. This assignment is simply a change in ownership of the hotel structure, not the operation of the hotel itself.

There will be a substitute resolution that adds the name of the entity to which the lease is being assigned.

RESOLUTION NO. RS2006-1141 (MCCLENDON) – This resolution approves a contract between the Metropolitan Government and Pitney Bowes for the lease of a mail metering system and other equipment for Metro postal services. The Metropolitan Code of Laws provides that the lease of equipment in excess of $5,000 per year must be approved by resolution of the council. The term of this contract is to terminate on October 31, 2009. The contract includes a one year warranty that covers the equipment. Metro may terminate this contract upon thirty days written notice. Pursuant to the contract, Pitney Bowes agrees to maintain commercial general liability insurance in the amount of $1 million per occurrence and agrees to indemnify Metro from any claims, damages, or injuries arising from the negligent or intentional acts of Pitney Bowes.

RESOLUTION NO. RS2006-1142 (MCCLENDON) – This resolution approves a revised application for a grant in the amount of $141,755 in residual funds from the juvenile accountability incentive grant program awarded through the Tennessee commission on children and youth. The grant funds will be used by the juvenile court to fund two community-based probation officer positions and one part-time intake probation officer. There will be a required match of $15,751. The grantor requested that certain revisions be made to the proposed grant budget related to how funds are disbursed, which necessitated council approval of a new grant application.

RESOLUTION NO. RS2006-1143 (DOZIER & MCCLENDON) – This resolution approves a $50 donation from Jane Fort to the Metropolitan police department's youth services division.

RESOLUTION NO. RS2006-1144 (MCCLENDON) – This resolution approves a grant in the amount of $2,490 from State Farm Insurance Company to the Metropolitan police department for the Park Smart initiative. There is no required local match for this grant.

RESOLUTION NOS. RS2006-1145 THROUGH RS2006-1148 (DOZIER & MCCLENDON) – These four resolutions approve amendments to grants from the state emergency management agency to the Metropolitan Government to prepare first responders regarding homeland security, and to provide supplemental funding for local emergency management assistance. These four grants are all federal pass-through funds from the U.S. department of homeland security. These amendments simply extend the term of the grant for a year to allow the unexpended funds to be utilized.

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RESOLUTION NOS. RS2006-1145 THROUGH RS2006-1148 (continued)

Resolution No. RS2006-1145 approves an amendment to a grant in the amount of $1,444,463 to acquire equipment to enhance the capabilities of first responders for homeland security. These funds will be used to acquire personal protective equipment, communications equipment, detection equipment, physical security enhancement equipment, terrorism incident prevention equipment, and logistical support equipment. This resolution extends the term of the grant until February 28, 2006.

Resolution No. RS2006-1146 approves an amendment to a grant in the amount of $224,910 to prepare first responders for weapons of mass destruction, and terrorist incidents involving chemical, biological, radiological, nuclear, or explosive devices. This resolution extends the term of the grant until February 28, 2006.

Resolution No. RS2006-1147 approves an amendment to a grant in the amount of $40,000 to prepare first responders to deal with terrorism incidents involving chemical, biological, nuclear, or other explosive devices. These funds will be used to hire a consulting firm to develop a strategic plan for dealing with such incidents. This resolution extends the term of the grant until February 28, 2006.

Resolution No. RS2006-1148 approves an amendment to a grant in the amount of $3,536,966 to sustain key homeland security programs. These grant funds will be used to complete an initial strategy implementation plan to detect, prevent, and protect citizens from the threat of terrorism, and to respond to terrorist attacks. This resolution extends the term of the grant until May 31, 2006.

RESOLUTION NO. RS2006-1149 (MCCLENDON) – This resolution accepts a grant in the amount of $39,133 from the state department of labor and workforce development to the Nashville career advancement center to provide training to workers at Hayward Pool Products through the state incumbent worker training program. These federal funds, under the Workforce Investment Act of 1998, will be used to upgrade skills for 84 employees at Hayward Pool Products in Nashville. The company applied for these funds to help train its employees in implementing a new manufacturing process to increase production and efficiency. The grant will be administered through the Nashville career advancement center. The term of the grant is from October 17, 2005 to June 30, 2006, with a possible one-year extension.

RESOLUTION NO. RS2006-1150 (FORKUM & MCCLENDON) – This resolution approves a grant in the amount of $250,000 from the Nashville Public Library Foundation to the public library to provide staffing for the special collections division. The term of the grant is from December 1, 2005 through November 30, 2008. These funds will be used to pay the salaries of two full-time positions for three years. These two positions will be responsible for coordinating digital projects in the special collections division, assisting researchers and the general public in the use of special collections, and to process non-book collections.

RESOLUTION NO. RS2006-1151 (MCCLENDON) – This resolution approves an annual grant in the amount of $85,000 from the state department of environment and conservation to the Metropolitan Government to provide assistance in maintaining and operating a permanent household hazardous collection site located at 941 Dr. Richard Adams Drive. The term of this grant is from January 15, 2006 through June 30, 2006, with a possible one-year extension.

RESOLUTION NO. RS2006-1152 (TOLER & MCCLENDON) – This resolution approves an application for a grant in the amount of $1 million from the state department of transportation for

streetscape improvements for Demonbreun Street. The grant award will be part of a larger project to develop an "Avenue of the Arts" along the section of Demonbreun Street between 1st and 17th Avenues. These federal pass-through funds will be used to construct 3,100 linear feet of sidewalk, landscaping and other scenic beautification, and to purchase streetscape furniture and lighting. There will be a required local match of $450,000 for this grant.

RESOLUTION NO. RS2006-1153 (MCCLENDON) – This resolution authorizes the compromise and settlement of a lawsuit brought by Carolyn Alexander against the Metropolitan Government in the amount of $25,000. On December 10, 2001, Ms. Alexander went with a friend to pick up her niece at the Ross head start facility. Ms. Alexander allegedly tripped and fell over a water hose in the stairway causing injuries to her shoulder. The water hose ran from the basement, up the stairs, and out the double doors to the playground.

There is a dispute as to who ran the hose through the stairway. Outdoor Recreation, Inc., had been awarded a contract to provide playground work at various head start facilities, and subcontracted the work at the Ross head start facility to Mid-South Playground, LLC. After completing the work, Mid-South was asked by the facilities manager for the Metro action commission to return to the Ross facility to clean up an oil stain at the playground. Mr. Mynatt, an employee for Mid-South, went back to the facility and determined that a pressure washer was needed to clean up the spill, but there was no outside water source. He spoke with the two custodians at the facility about the lack of water source before leaving to retrieve his pressure washer. Mr. Mynatt claims that when he returned to the site the hose was already in place. The two custodians allege that it was the contractor who hooked up the hose to a water source in the basement and ran the hose up the stairs to the playground.

Ms. Alexander sustained a tear in her left shoulder, which required surgery. She incurred medical bills totaling $18,199.54, and was given a permanent impairment rating by her doctor of thirteen percent to her upper extremity. Ms. Alexander filed suit against Metro, the contractor, and the subcontractor. Metro filed a cross-claim against Outdoor Recreation, Inc., for indemnification. Even if Metro could prove that the subcontractor placed the hose in the stairway, which is in dispute, Metro could still be liable under the theory that Metro had actual or constructive notice of a dangerous condition in the stairway. This case was ordered for mediation, which resulted in a settlement of $57,500 whereby Metro and Mid-South Playground would each contribute $25,000, and Outdoor Recreation, Inc would contribute $7,500. Based upon the possible exposure of the Metropolitan Government and the costs to continue litigating the case, the department of law recommends settling the case for $25,000.

RESOLUTION NOS. RS2006-1154 (MCCLENDON) – This resolution authorizes Chappy's Seafood Restaurant to install and maintain three awnings above the right-of-way at 1721 Church Street. Ordinance No. O87-1890 allows such aerial encroachments to be approved by resolution of the council rather than ordinance. The applicant has agreed to indemnify the Metropolitan Government from all claims in connection with the installation and maintenance of the encroachments, and is required to provide a $300,000 certificate of public liability insurance naming the Metropolitan Government as an insured party. This resolution has been approved by the planning commission.

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- BILLS ON SECOND READING –

ORDINANCE NO. BL2003-1 (WALLACE) – This ordinance, as amended, 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 allow restaurants possessing a valid license issued by the state alcoholic beverage commission for on-premises liquor consumption to be exempted from the minimum distance requirements 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 requested a list from the state alcoholic beverage commission of all liquor-by-the-drink establishments in Davidson County to compare with the list of restaurants that have a Metro beer permit. The Council received a list from the alcoholic beverage, but it included restaurants from all over the state. After attempting to sever out those establishments that are not in Davidson County, it appears that approximately 15 out of a total of 440 establishments have a state liquor-by-the-drink license but do not have a Metro beer permit. However, this does not necessarily mean that all these establishments do not meet the minimum distance requirements in the Code.

ORDINANCE NO. BL2005-842 (CRADDOCK, GOTTO & OTHERS) – This ordinance amends the Metropolitan Code of Laws to implement standards of conduct for employees of the Metropolitan Government. When it was filed, this ordinance mirrored the provisions of Substitute Ordinance No. BL2005-659, implementing new standards of conduct for members of council. However, Substitute Ordinance No. BL2005-659 was subsequently amended to delete some of the disclosure requirements prior to its enactment. This ordinance lists the standards of conduct contained in Substitute Ordinance No. BL2005-659, and makes them applicable to all Metro employees, including appointed officials, Metro elected officials (other than members of council), and employees of elected officials. The disclosure provisions contained in Substitute Ordinance No. BL2005-659 would only apply to: (1) the mayor; (2) the employees in the mayor's office, including members of the mayor's cabinet; (3) the employees in the council office; (4) the holders of elected offices created by the charter; and (5) all directors, executive directors, assistant directors, and associate directors of Metro agencies, boards and commissions, excluding Nashville Electric Service, the airport authority, and the Metropolitan Transit Authority.

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ORDINANCE NO. BL2005-842 (continued)

The council office would point out that all employees of the Metropolitan Government are covered by an ethics policy enacted by executive order of the mayor, which has been in effect for a number of years. Further, the mayor and department heads are required to file disclosures similar to those contained in this ordinance with the bond rating agencies and financial institutions to ensure that they do not have any conflicts of interest.

This ordinance would not be applicable to state elected officials nor their employees, and would likely not be applicable to employees within the classified civil service system absent action by the civil service commission, as the charter provides that the civil service rules adopted by the commission have the full force and effect of law. The employees that are not in the classified service include: (1) elected officials; (2) the director of finance; (3) the director of law and the Metropolitan attorneys; (4) the employees in the mayor's office; (5) the employees in the council office; (6) the executive director of boards and commissions; (7) professional personnel employed by the board of health; (8) employees of the judges; and (9) deputies to the court clerks, trustee, tax assessor, and register of deeds.

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 Chapter13.08 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. BL2005-875 (JAMESON, RYMAN & DOZIER) – This ordinance approves a fifth amendment to the Rutledge Hill redevelopment plan to allow the construction of a new minor league ballpark at the former thermal site. A detailed analysis of this ordinance is included in the supplemental analysis of the Sounds stadium legislation.

ORDINANCE NO. BL2005-878 (JAMESON, FORKUM & OTHERS) – This ordinance authorizes the acquisition of a small portion of railroad property by negotiation or condemnation, declares the former thermal site property to be surplus, and transfers the property to the industrial development board to allow for the construction of a new minor league ballpark and mixed-use development on the property. A detailed analysis of this ordinance is included in the supplemental analysis of the Sounds stadium legislation.

ORDINANCE NO. BL2005-879 (JAMESON, FORKUM & OTHERS) – This ordinance approves a memorandum of understanding between the Metropolitan Government, the Nashville Sounds, Struever Bros. Eccles & Rouse, the industrial development board, and the Metropolitan development and housing agency regarding the construction of a new minor league ballpark and mixed-use development at the former thermal site. A detailed analysis of this ordinance is included in the supplemental analysis of the Sounds stadium legislation.

ORDINANCE NO. BL2005-911 (DREAD) – This ordinance amends the Metropolitan Code of Laws to require after hours clubs to obtain a permit from the beer permit board. Currently, after hours clubs are not regulated by any Metro agency unless they serve beer or are considered sexually oriented businesses. This ordinance essentially incorporates after hours establishments into the regulations governing dancehalls. The code currently requires that all dancehalls obtain a permit from the beer permit board in order to operate. By broadening these regulations to include after hours clubs, such establishments would have to submit an application to the beer permit board, along with a $100 application fee, indicating the name of the applicant, name and location of the business, and the name of any person or entity having at least a five percent ownership interest in the establishment. The ordinance defines "after hours establishment" as a commercial establishment open to the public after 3:00 a.m., or an establishment open to the general public that allows customers to bring alcoholic beverages onto the premises. The definition expressly excludes sexually oriented establishments, which are regulated by the sexually oriented business licensing board.

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ORDINANCE NO. BL2005-911 (continued)

Pursuant to this ordinance, no permit could be issued for any after hours establishment if any person having at least a five percent ownership interest in the establishment has been convicted during the past five years of a crime of moral turpitude. The beer permit board defines a crime of moral turpitude as being murder, any sex crime, the sale of illegal drugs, and embezzlement. In addition, it would be unlawful for an after hours establishment to allow any indecent or violent act to occur on the premises. The ordinance grants the authority to the beer permit board to adopt rules and regulations to effectuate the purpose of the law and to secure compliance.

ORDINANCE NO. BL2005-921 (SUMMERS, HAUSSER & OTHERS) – 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 been found by a court to have demolished any structure located within a historic overlay district during the previous twelve months without first obtaining a preservation permit from the historic zoning commission. The zoning code requires property owners seeking to alter or demolish a structure located within a historic overlay district to obtain a preservation permit from the historic zoning commission prior to commencing work. In reviewing the application for a preservation permit, the historic zoning commission may consider economic hardship based upon (1) the cost of demolition versus the cost of compliance with the historic zoning commission's determinations; (2) a report from a licensed architect or engineer regarding the structural soundness of the building or the economic feasibility of rehabilitating the property; (3) the estimated market value of the property in its current condition and its estimated value if the historic zoning commission determinations are followed; and (4) the purchasing price of the property and annual gross income from the property.

ORDINANCE NO. BL2005-922 (DOZIER) – This ordinance amends the Metropolitan Code of Laws to provide for reimbursement of customer overpayments for water and sewer services. The Metro Code sections regarding water rates and charges provide for the classification of customers into four classes for the purpose of billing. These four classes are described as follows:

1. Residential – Up to 2 housing units on a common meter
2. Small commercial – Up to 1,600 cubic feet per month
3. Intermediate commercial and industrial – 1,600 to 200,000 cubic feet per month
4. Large commercial and industrial – Over 200,000 cubic feet per month.

Pursuant to this ordinance, if the director of water and sewerage services determines that a customer has been overcharged because of an inaccurate classification, based upon the previous 12-month water usage period, then the customer shall be reimbursed for the overpayment. The reimbursement would be for a period of 36 months prior to the date the error was discovered, unless a certain date for the error can be established that is less than 36 months prior to the discovery date. A similar ordinance was withdrawn by the council in 2003.

The council office would point out that this ordinance would apply retroactively, meaning that reimbursements would have to be made for any overcharge that occurred prior to the effective date of this ordinance. The council office and the department of law have raised concerns regarding whether such a retroactive provision is authorized under Tennessee law. As a result of the retroactive application of this ordinance, the director of finance has refused to certify the availability of funds. A copy of the finance director's letter is attached to this analysis.

ORDINANCE NO. BL2005-923 (MCCLENDON) – This ordinance authorizes the department of general services to accept a donation of furniture and office equipment from the Davidson County Community Services Agency. The estimated value of the furniture and equipment is $2,555, and consists of filing cabinets, tables, chairs, printers, and fax machines.

ORDINANCE NO. BL2005-924 (COLEMAN, WILHOITE & MCCLENDON) – This ordinance authorizes the acquisition of approximately 48 acres of property located in the Antioch area for the construction of a new high school. This acquisition, by either negotiation or condemnation, was approved by the board of education on October 11, 2005. This ordinance has been approved by the planning commission.

This ordinance must be deferred pursuant to the Metropolitan Code of Laws. The Metro code requires that a public hearing be held for ordinances authorizing the acquisition of school property. The public hearing is typically held in a joint meeting of the education committee and planning and zoning committee. The code further provides that the planning commission is to advertise the public hearing not less than 15 days and no more than 30 days prior to the hearing in order for the ordinance to be considered on second reading. The public hearing for this ordinance was not advertised in time to hold the public hearing on January 17, 2006.

ORDINANCE NO. BL2005-925 (TOLER) – This ordinance authorizes the director of public property administration to transfer various permanent sewer line easements located in Williamson County. A 1998 agreement between Metro and the City of Brentwood for additional sewer capacity in the Mill Creek and Owl Creek basins identified the easements. The transfer of the easements will be via quit claim deed.

ORDINANCE NO. BL2006-927 (RYMAN, DOZIER & OTHERS) – This ordinance names the existing plaza between the front steps and the front entrance 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.

Ordinance No. BL2005-845, currently on third reading, would name the proposed plaza in front of the courthouse to be constructed on top of the parking garage in honor of former Mayor Fulton.

ORDINANCE NO. BL2006-928 (BROWN) – This ordinance abandons an unpaved 50' by 150' strip of Hillman Place right-of-way. This closure has been requested by Alvin C. Greer, an adjacent property owner. There is no future governmental need for this section of roadway. The Metropolitan Government will retain all easements. This ordinance has been approved by the planning commission and the traffic and parking commission.

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ORDINANCE NO. BL2006-928 (continued)

The Council Rules of Procedure require that the consent of affected property owners be obtained prior to the council considering an ordinance abandoning a street or alley right-of-way. The sketch for this ordinance shows a 60 foot wide right-of-way, with 50 feet crossing the applicants property and 10 feet crossing three adjacent parcels. This ordinance purports to abandon the 50 foot section encumbering the applicant's property. Consent of the other three property owners has not been obtained. Typically, when right-of-way is abandoned by the government, it is divided equally among adjacent properties in accordance with common law principles.

The council office would point out that the $300 filing fee for this abandonment has not been paid.

ORDINANCE NO. BL2006-929 (WHITMORE & SUMMERS) – This ordinance abandons a portion of the right-of-way for Alley #902 from Clifton Avenue northward to Alley #623. This closure has been requested by Charles R. Jones, the affected property owner. There is no future governmental need for this section of roadway. The Metropolitan Government will retain all easements. This ordinance has been approved by the planning commission and the traffic and parking commission.

ORDINANCE NO. BL2006-930 (WALLACE) – This ordinance abandons a portion of the 11th Avenue South and 12th Avenue South right-of-way. This closure has been requested by the Metropolitan development and housing agency (MDHA). There is no future governmental need for these sections of right-of-way since the roadway has been relocated. This ordinance will abandon the following sections of right-of-way:

1. 11th Avenue South between Laurel Street and Pine Street;
2. 11th Avenue South between the south right-of-way margin of Pine Street and 12th Avenue South; and
3. A portion of 11th Avenue South and 12th Avenue South at the southwest corner of the intersection of these two streets.

Consent of the affected property owners is on file with the department of public works. The Metropolitan Government will retain all easements. This ordinance has been approved by the planning commission.

ORDINANCE NOS. BL2006-932 through BL2006-935 – These four 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. The four ordinances have been approved by the planning commission.

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ORDINANCE NOS. BL2006-932 through BL2006-935 (continued)

Ordinance No. BL2006-932 (Toler, Greer & Others) authorizes the acceptance of easements for the following properties:

- 849 Briley Parkway
- 317 Seven Springs Way
- 377 Athens Way, #100
- 5606 Cloverland Drive
- 681 Old Hickory Boulevard
- 675 Old Hickory Boulevard
- 3714 Crestview Drive
- 3711 Rosemont Avenue
- 1216 Northgate Business #101
- 525 Donelson Pike
- 3104 and 3102 West End Circle
- 3102 West End Circle
- 628 Southgate Avenue
- 3908, 3906, 3904 and 3900 Charlotte Avenue
- 2917 Nolensville Pike

Ordinance No. BL2006-933 (Toler & Shulman) authorizes the acceptance of easements for the following properties:

- 2332, 2334, 2312, 2316 and 2320 Murfreesboro Pike
- 1513, 1511 and 1508 Dickerson Pike
- 1400 Huffine Street
- 1401 Litton Avenue
- 749, 745, 743 and 741 Garrison Drive
- 822 and 820 Charlie Place
- 3812, 3814, 3817 and 3819 Dartmouth Avenue
- 612, 700, 702, 705, 706, 707, 708, 709, 710, 711, 713, 714, 715, 801, 803, 805, 807, 809 and 811 Lynnbrook Road
- 3604, 3606, 3608, 3610, 3612, 3614, 3616 and 3618 Meadow Drive
- 2334, 0404, 2410, 2414, 2424 and 2437 Golf Club Lane
- 3439, 3445 and 3518 Hampton Avenue
- 615 and 712 Bowling Avenue
- 3600 Sperry Avenue
- 808, 812 and 815 Timber Lane
- 3417 and 3420 Valley Brook Road
- 3435 and 3434 Woodmont Boulevard

A housekeeping amendment should be adopted for this ordinance correcting the spelling of a street name.

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ORDINANCE NOS. BL2006-932 through BL2006-935 (continued)

Ordinance No. BL2006-934 (Toler, Greer & Others) authorizes the acceptance of easements for the following properties:

- Elm Hill Pike, unnumbered
- 2955 Brick Church Pike
- 2020 Blakemore Avenue
- 2000 Wedgewood Avenue
- Gallatin Pike, unnumbered
- 2519 Grandview Avenue
- Central Pike, unnumbered
- 501 Main Street
- 10 Fairfield Avenue
- 3507 Belmont Boulevard
- 5502 Old Hickory Boulevard

Ordinance No. BL2006-935 (Toler, Greer & Others) authorizes the acceptance of easements for the following properties:

- 1230 Robinson Road
- 658 Grassmere Park
- Nolensville Pike, unnumbered
- 823 3rd Avenue North
- 7101 Cockrill Bend Boulevard
- 2800 Gallatin Pike
- 3125, 3129 and 3127 Long Boulevard
- 2909 Murfreesboro Pike
- 3184 and 3186 Parthenon Avenue
- 1916 Adelicia Street
- 3414 Hillsboro Pike
- 3011, 3013 and 3015 Vanderbilt Place
- 31st Avenue South, unnumbered

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- BILLS ON THIRD READING -

ORDINANCE NO. BL2005-648 (DOZIER) - This zoning text change would allow signs with graphics or electronic displays to be located on any property in Davidson County that is oriented to a four-lane or controlled access highway (Briley Parkway, West End, interstates, etc.). The Zoning Code currently requires that signs with changeable text and graphics remain static for at least two seconds. In 2004, the Council created an exception to this provision to allow graphic and video display signs within the commercial attraction (CA) zoning district, which essentially is limited to the Opryland/Music Valley Drive area.

This ordinance would expand the exception, currently limited to commercial attraction areas, to include all four-lane roads and controlled access highways. According to the planning staff analysis, this would allow video signs on twenty four-lane roads in Davidson County, not including Briley Parkway and the four interstates. The Council Office would point out that the prohibition on video signs was included in the Code for public safety reasons to limit driver distractions.

There may be a proposed amendment limiting this ordinance's application to state roads with a maximum speed of 40 mph.

This ordinance has been disapproved by the planning commission.

ORDINANCE NO. BL2005-763 (LORING, JAMESON & MCCLENDON) – This zoning text change makes various modifications to the tree and landscaping provisions of the zoning code. The tree ordinance is a set of regulations and standards for landscaping, buffering, and tree placement for developments. The provisions of the existing tree ordinance only apply to commercial and multi-family developments, not single or two-family homes. This ordinance has been brought forth at the recommendation of the urban forester and the tree advisory committee. The modifications to the existing tree ordinance include the following:

1. This ordinance would make it unlawful to "top" a tree within Davidson County. Topping a tree is defined by the ordinance as a severe cutting back of the limbs to stubs so as to remove the canopy and disfigure the tree. The code currently prohibits the topping of trees only on public property, which is consistent with the purpose of the chapter. This ordinance would attempt to extend this prohibition to all trees, both on public and private property. This provision would not apply to trees damaged by storms or trees located under utility wires where other pruning practices are impracticable, as determined by the urban forester.

   The council office is of the opinion that this provision should not be part of this ordinance. As stated above, the tree provisions in the zoning code do not apply to single and two-family dwellings. However, this provision would amend Chapter 2.104 of the Metro code, not the zoning code. Chapter 2.104 of the code establishes the duties of the urban forester, and provides a permit process for arborists performing tree work and for the removal of public trees. The code gives the urban forester authority for the general oversight and maintenance of public trees. If the council wishes to ban the topping of all trees, this ordinance is not the best mechanism to do so. The council office recommends including such provisions in a separate ordinance for that specific purpose.

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ORDINANCE NO. BL2005-763 (continued)

2. The ordinance would allow the urban forester to require a developer to post a performance bond to cover the cost of implementing the landscape plan. The department of codes administration already requires permit bonds in order to obtain a building permit. Performance bonds are typically used for road and infrastructure construction requirements to ensure that roads are built to Metro standards, since Metro usually accepts the roads for maintenance once they are constructed.

   The council office is of the opinion that requiring a performance bond for landscaping plans adds an unnecessary provision to the code. The permit bond that is already required is sufficient to address the concerns regarding the completion of landscaping plans.

3. This ordinance would require that no more than fifty percent of the trees in any one planting area be of the same tree species.

4. This ordinance would delete the interior planting exemption for service loading areas or tractor-trailer loading, staging or parking areas. Instead, the interior planting requirements for tractor-trailer loading and parking areas could be adjusted to combine multiple smaller tree islands into larger, but fewer, tree islands.

5. The ordinance would require that watering for landscaping be accomplished by fully automatic underground irrigation systems. The code currently requires watering to be via an underground sprinkler or an outside hose attachment.

   The council office would point out that adding a requirement for automatic sprinklers would substantially increase the construction costs for developments, including public schools. The Council Office recommends amending this ordinance to delete the words "fully automatic", which would still require underground irrigation systems, but such systems could be operated manually.

6. The ordinance would prohibit the staking or guying of trees unless absolutely necessary.

7. The ordinance would prohibit undeveloped property of a given parcel from being counted toward the tree density requirement. The urban forester would have the authority to permit additional credit to be applied to a required landscape area when a landmark or specimen tree located on the property is protected.

8. The ordinance would increase the width of the required perimeter landscape strips from five feet to eight feet whenever the strip is adjacent to a public street or used to separate a driveway or parking area from adjacent property.

9. The ordinance would add a minimum height of eighteen inches for evergreen shrubs required to be planted within perimeter landscaping strips that front a street right-of-way. The code currently does not set a minimum height for such shrubs.

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ORDINANCE NO. BL2005-763 (continued)

10. Prior to the urban forester making a landscaping inspection, the design professional who prepared the landscape plan would be required to certify in writing that he/she has inspected the landscaping and that it has been installed in accordance with the plan. This essentially codifies a practice already in place within the codes department.

There is a proposed substitute for this ordinance that would make the following changes to the bill:

- Delete the tree-topping prohibition.
- Make some technical changes to the buffering table, as requested by the planning commission staff.
- Delete the requirement that the applicant post a bond.
- Delete the requirement that the required underground sprinklers be fully automated. Properties of two-acres or less in size will be exempt from the sprinkler requirement.
- Delete the provisions that would allow the interior plating requirements for tractor-trailer staging areas to be combined into larger islands.
- Delete the requirement that a landscape compliance letter be submitted to the urban forester by the landscape design professional prior to an inspection.

This ordinance was referred to the planning commission on August 2, 2005. Since more than thirty days have elapsed since the referral of this ordinance to the planning commission, the ordinance can be adopted on third and final reading as if the ordinance had been approved by the commission.

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. This ordinance would also require that the reasonable costs for the tests of private equipment and devices in accordance with the plan be paid by the owners of such equipment or devices. The current law contains no such cost provision.

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.

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ORDINANCE NO. BL2005-845 (continued)

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. BL2005-858 (COLE, RYMAN & OTHERS) – This ordinance, as amended, 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 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 advising that such services be privatized.

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. BL2005-864 (MURRAY & SUMMERS) – This zoning text change would require the historic zoning commission to review demolition permit applications for historic homes. This ordinance, along with two amendments to the building code, was 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. This ordinance would give the historic zoning commission the responsibility for determining whether a residential structure meets this state law criteria. If the historic zoning commission determines that this state provision applies to a structure, legislation will be prepared for consideration by the council allowing the council to either approve or disapprove the demolition application.

ORDINANCE NO. BL2005-864 (continued)

Due to a recent decision issued by the Tennessee Supreme Court pertaining to the city of Knoxville's historic demolition ordinance, the amendments to the building code provisions regarding the issuance of demolition permits that were filed at the time of this ordinance were withdrawn. The court decision likely would require that these provisions go through the zoning process, even though they are technically amendments to the building code, not the zoning code. The court determined that restrictions on the issuance of demolition permits for historic properties substantially affected the use of land, and thus must follow the state zoning laws requiring notice and a public hearing held by the local legislative body. A new ordinance has been filed and is on first reading, which will be advertised and heard at the March public hearing. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2005-876 (RYMAN) – This ordinance amends the Metropolitan Code of Laws to add a member of the council public safety committee to the safety advisory board. The safety advisory board currently consists of seven members appointed by the mayor. The purpose of the board is to formulate and monitor the Metropolitan employee safety program, and report its findings to the executive secretary of the employee benefit board. This ordinance would increase the size of the board to eight members, with the eighth member to be elected by the council public safety committee from among its membership for a term of two years.

ORDINANCE NO. BL2005-880 (TOLER) – This ordinance approves the adoption of the additions, deletions, and/or other amendments to the Official Street and Alley Acceptance and Maintenance Map for the Metropolitan Government made during the previous year. These amendments are submitted annually by the department of public works. The map shows the dedicated streets and alleys that were either accepted or abandoned for public maintenance by Metro. This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2005-912 (TOLER) – This ordinance amends the Metropolitan Code of Laws provisions regarding the testing, maintenance, and operation of private fire hydrants. The Code currently provides that private fire hydrants are to be tested by the fire department every six months. There is a $40.00 fee for these inspections conducted by the fire department. This ordinance would transfer the testing responsibilities from the fire department to the department of water and sewerage services. The ordinance provides that the private fire hydrants are to be tested in accordance with procedures and at such intervals as determined by the fire chief. In addition to the $40.00 inspection fee, this ordinance would require owners of private fire hydrants to reimburse the water department for the actual costs for materials and parts consumed as part of the test. The ordinance further grants authority to the fire department and water services to promulgate rules and regulations required to implement the ordinance.

ORDINANCE NO. BL2005-913 (TYGARD, GOTTO & OTHERS) – This ordinance names the newly constructed Gateway bridge the "Korean War Veterans Memorial Bridge". From 1950 to 1953, 1.8 million U.S. troops served during the period of hostilities in Korea. Over 33,000 American troops died during the Korean War, with over 8,000 troops still missing in action. The last time the Council formally named a bridge by ordinance was in 1994 when the Jefferson Street Bridge was renamed the "Kelly Miller Smith Memorial Bridge".

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MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: **January 17, 2006**

RE: **Supplemental Analysis Report Concerning Proposed Nashville Sounds Ballpark Stadium**

- BILLS ON SECOND READING -

ORDINANCE NO. BL2005-875 (JAMESON) – This ordinance approves a fifth amendment to the Rutledge Hill redevelopment plan to allow for the construction of a new baseball stadium and mixed-use development at the former location of the downtown thermal transfer plant. This redevelopment plan was approved in 1986 and has been subsequently amended on four different occasions. The last amendment in 1997 added the Rolling Mill Hill property as part of the redevelopment district.

First, this ordinance expands the boundaries of the redevelopment plan to include the former thermal site property. The only way tax incrementing financing can be used to repay the debt on the construction of the stadium is if the property is included as part of a redevelopment plan administered by the Metropolitan development and housing agency. Second, the ordinance adds the use "stadiums or other sports facilities" to the list of permitted uses under the redevelopment plan. Third, the amount of the total permissible tax increment financing is increased from $15.5 to $35.5 million. Finally, the expiration date of the plan is extended from December 31, 2020 to December 31, 2040.

ORDINANCE NO. BL2005-878 (JAMESON, FORKUM & OTHERS) – This ordinance declares the thermal site property to be surplus and authorizes the director of public property administration to convey the property to the industrial development board for construction of a new minor league baseball stadium and mixed-use development. As provided in the memorandum of understanding, which is the subject matter of Ordinance No. BL2005-879, the industrial development board will be the entity responsible for the construction of the new stadium.

This ordinance also authorizes the director of public property administration to acquire a railroad spur by negotiation or condemnation, which is necessary in order for the project to

proceed. This railroad property is included in a 1946 deed to the Tennessee Central Railway Company. This property is not being used for railroad purposes.

There is a housekeeping amendment that should be adopted for this ordinance that corrects the description of the property to be conveyed.

ORDINANCE NO. BL2005-879 (JAMESON, FORKUM & OTHERS) – This ordinance approves a memorandum of understanding (MOU) between the Metropolitan Government, the Nashville Sounds, the industrial development board (IDB), the Metropolitan development and housing agency (MDHA), and Struever Bros. Eccles & Rouse regarding the construction of a new $43 million minor league baseball stadium and mixed-use development on the former thermal site property. The MOU essentially sets forth the agreement reached by the parties for the financing and construction of the ballpark and mixed-use development, and establishes the conditions that must be satisfied in order for the project to be constructed. This ballpark development is to be constructed on a twelve acre site next to the Cumberland River, which consists of the former thermal property owned by Metro and a portion of Rolling Mill Hill owned by MDHA. This project will involve the development of two tracts: the ballpark tract and the mixed-use tract. The stadium itself will be constructed on the ballpark tract. The mixed-use tract will be developed by Struever Bros., and will consist of a mixture of residential and commercial uses. This development is to be completed essentially at the same time as the stadium. It is anticipated that all of the transactions discussed below between Metro, the IDB, the Sounds and Struever Bros. will take place at a single closing once the deal is approved by the Council.

The essential terms of the MOU are as follows:

- The Metropolitan Government will convey the thermal site property to the IDB, who will in turn sell the property to MDHA for $17 million. This sale price is to be financed by approximately $20 million in tax increment financing (TIF), which consists of the $17 million sale price and $3 million in carrying and financing costs. TIF is a financing mechanism authorized by state law whereby the increased tax revenue generated by a development is used to pay the debt service on the construction of the development, which is typically secured by private financial institutions. The Sounds will be responsible for securing private banks to lend the TIF financing. In order for the TIF financing to be sufficient to repay the debt, the property for which the increased tax revenues will be used includes not only the ballpark tract and the mixed-use tract, but also additional Rolling Mill Hill parcels that will be developed by Struever Bros. Thus, the Metropolitan Government will be foregoing future tax revenue for these additional parcels as well.
- Metro is obligated to convey the property free of any environmental contamination and in construction-ready condition.
- Once MDHA determines that the improvements to the mixed-use tract will provide sufficient incremental tax to support the TIF financing, MDHA will issue non-recourse promissory notes to facilitate the TIF financing.
- MDHA will lease the ballpark to the IDB for 30 years, plus two possible five year extensions. The IDB will in turn lease the ballpark to the Sounds. The Sounds will

supervise and manage the construction of the stadium in cooperation with MDHA and the IDB. Ownership of the stadium, once it is completed, will remain with the IDB.

- In addition to the TIF financing, Metro agrees to remit to the IDB sales tax rebates to the extent legally available under state law for debt service on the ballpark construction. This rebate will consist of the difference between the sales tax generated at Greer Stadium and what is generated at the new stadium. Metro will keep the same amount of sales tax revenues that are currently generated at Greer Stadium.
- MDHA will sell the mixed-use tract to Struever Bros. for approximately $3 million, which will also be applied toward the construction costs of the ballpark. The Sounds will be responsible for obtaining private financing of approximately $23 million, in addition to the $20 million sale price financed by TIF. If the construction costs exceed $43 million, the Sounds will be solely responsible for the increase.
- Prior to the conveyances described above, sufficient evidence must be provided to Metro, MDHA, and the IDB that the ballpark construction financing is irrevocably committed. There will be no financial liability on Metro to cover the construction costs of the stadium in the event the Sounds default on the loans. This is a significant difference between this project and the coliseum, which was constructed using general obligation bonds issued by the Metropolitan Government and backed by tax dollars.

Also incorporated into the MOU are two leases. One lease is for the property the ballpark is to be constructed on (the ballpark ground lease), and the other is for the ballpark itself (the construction management and ballpark lease). The terms of the leases are essentially the same. The actual lease documents will be submitted for council approval by resolution at a later date. Some of the notable lease provisions are as follows:

- The Sounds will select the architects, engineers, and construction managers for the construction of the ballpark subject to approval by Metro, MDHA and the IDB. For any construction contract in excess of $25,000, the Sounds will be required to provide a performance bond. Metro, MDHA, and the IDB will all have a representative involved in overseeing the construction.
- The Sounds will be required to maintain full replacement cost insurance in the amount of $20 million, plus a $10 million umbrella policy, to cover any damage to the ballpark both during and after construction. The Sounds and Metro will be named as joint loss payees on the insurance policies. The Sounds agree to indemnify Metro from liability resulting from actions or omissions of the organization or its employees.
- The term of the ballpark lease is for 30 years from the date of completion, with an option to extend for two additional five-year periods. The Sounds will be required to pay to the IDB an annual rent necessary to pay the debt service on the ballpark. Sounds management has stated that the debt on the ballpark will be repaid within seven years. The rent for ground lease is a nominal $100 annually.
- The Sounds will be responsible for paying all utilities and providing security, traffic control and janitorial services.
- The Sounds will have the full responsibility for repair and maintenance to the ballpark to keep it in a "first class condition", which is defined as being in good condition (normal wear and tear expected) and having the same level of improvements as comparable facilities for a period of fifteen years. The council office would point out that this provision seems to indicate that the Sounds will only be required to maintain the facility at a level similar to comparable stadiums for half of the lease term. Metro will have no

responsibility for the upkeep of the stadium other than paying $500,000 per year toward maintenance. Metro currently pays the Sounds $250,000 per year for maintenance at Greer Stadium. The Sounds will be required to provide an annual schedule showing use of the $500,000 for the previous year. In addition, the Sounds will be required to provide annual income statements and an independent audit of its finances annually.

- The Sounds will have the exclusive naming rights and broadcast rights for the ballpark and will be entitled to receive all revenues from the ballpark including ticket sales, concessions, advertising, and the sale of naming rights. The Sounds have the right under the lease to sell advertising within the ballpark and to erect interior signs. Metro is entitled to one free full-page color advertisement in each program, one announcement on the scoreboard at each game promoting Nashville, and one announcement on the PA system.
- The Sounds will have the exclusive control over the clubhouse during the baseball season and have the right to use the ballpark for all games and practices. Metro will be entitled to 15 days free use of the ballpark on days that do not conflict with the Sounds' use of the facility. Metro will be responsible for any additional operating expenses resulting from its 15 days of use and will split revenues derived from any Metro use with the Sounds 50/50. Metro will not be able to use the ballpark the day of, the day before, or the day after a Sounds home game without written consent of the Sounds.
- The Sounds will be required to use the word "Nashville" as part of their name for the duration of the lease. There is no requirement that the word "Sounds" be used. Thus, the team name could be changed in the future.
- If the Sounds lose their baseball franchise, they are still obligated to field a team at the ballpark for the same number of home games at the same or greater level of professional play and league affiliation. Further, the Sounds can assign this lease to another team without the consent of Metro, provided the team is in a same or higher level of professional league, and so long as the assignee agrees to assume all obligations of the Sounds under the MOU and demonstrates it is financially capable of assuming all obligations under the lease and the MOU. If the Sounds assign the lease, they are to be released from all liability.

The council office would stress that there is nothing in the agreements preventing the Sounds from selling the team to another organization as long as the new team agrees to abide by the terms of the agreements. While the Sounds have made representations to the Council that they have no intention of selling or leaving Nashville in the future, having a new state-of-the-art ballpark will certainly enhance the team's value and marketability.

This ordinance also designates the IDB as a "comparable municipal agency" for purposes of allowing the IDB to receive all of the new sales tax revenues related to the operation of the new baseball stadium to be applied toward retiring the debt. Pursuant to state law, the sports authority, or a "comparable municipal agency", is authorized to receive all of the new state and local sales tax revenue generated by a new minor league baseball stadium constructed by the municipal agency for a period of thirty years. This includes all sales tax revenues generated from ticket sales, concessions, and merchandise. This provision was added by the state legislature to allow these tax revenues to be used to benefit a minor league baseball team only within counties having a metropolitan form of government. The MOU provides that an unqualified opinion, satisfactory to Metro in all respects, must be provided by the Sounds' legal counsel as to the legality of designating the IDB as a "comparable municipal agency". Frost

Brown Todd LLC, counsel to the Sounds, issued such opinion January 6, 2006. The council office would recommend that the council receive an opinion from the director of law and Metro's bond counsel that the Frost Brown Todd LLC opinion is acceptable prior to adopting this ordinance on third and final reading.

This ordinance provides that amendments to the MOU and any subsequent leases or agreements contemplated by the MOU may be approved resolution by of the Council receiving twenty-one affirmative votes.

There may be proposed amendments to the MOU offered by members of council. The council office would point out that no amendment to the MOU would be binding unless all of the parties involved agreed in writing to the amended MOU. The council cannot unilaterally amend a contract that has been executed by multiple parties. Further, any amendment to the agreement would likely prevent the project from moving forward, as the financing mechanisms are based upon the agreement in the form presented to the council.

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