MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: **February 7, 2006**

RE: **Analysis Report**

Balances As Of:	**2/1/06**	**1/26/05**
GSD 4% RESERVE FUND	***$22,356,763**	$13,333,475
CONTINGENCY ACCOUNTS		
GSD	- 0 -	- 0 -
USD	$50,000	$50,000
GENERAL FUND		
GSD	$26,413,198	$28,814,961
USD	$8,770,800	$5,003,020
GENERAL PURPOSE SCHOOL FUND	$17,566,775	$25,250,424

* Assumes estimated revenues in fiscal year 2006 in the amount of $10,894,720

- BILLS ON SECOND READING –

SUBSTITUTE ORDINANCE NO. BL2003-1 (SUMMERS) – This substitute 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 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, after notice and a public hearing, approving the exemption. The public hearing will be conducted by the council public safety-beer and regulated beverages committee. Notice of the public hearing would be mailed to all property owners within 600 feet of the establishment seeking the exemption from the distance requirements. 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. BL2005-861 (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. BL2005-911 (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.

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. BL2005-922 (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.

ORDINANCE NO. BL2006-931 (HART) – 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 the emergency communications district.

An identical ordinance changing McIver Street to Hunters Meadow Lane was approved by the council on December 6, 2005. However, no notice was given to the property owners affected by this street name change, as is required by the Metro code. The notices have now been sent and this ordinance is in compliance with the law.

ORDINANCE NO. BL2006-936 (MURRAY) – This ordinance amends the building code to place additional requirements in order to obtain a demolition permit for a historic structure. This ordinance 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 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 historical commission.

First, the ordinance 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:

1. 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.)
2. The structural condition of the building to be demolished.
3. An estimated cost to repair the structure.
4. 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.

Second, the ordinance would require that the executive director of the historical commission approve a demolition permit prior to its issuance for a structure that is listed or 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.

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ORDINANCE NO. BL2006-936 (continued)

An identical version of this ordinance was withdrawn by the council on third reading on December 20, 2005, at the request of the administration. The reason for the withdrawal was a recent holding by the Tennessee Supreme Court pertaining to a similar ordinance in Knoxville that required the ordinance to go through the zoning public hearing process, even though it was technically an amendment to the building code. The court held that such ordinances that substantially affect a property owner's use of his/her property are in the nature of zoning ordinances and should follow the state law zoning procedures. In order to comply with this recent opinion, this ordinance should be deferred and advertised for the March public hearing.

This ordinance has been referred to the planning commission.

ORDINANCE NO. BL2006-938 (GREER, FORKUM & OTHERS) – This ordinance declares 48 parcels of property owned by the Metropolitan Government 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 Government has determined that these parcels are no longer needed for governmental purposes. The proceeds from the sale of these parcels will be credited to the general fund. The property to be sold consists of the following:

Baker Road, unnumbered
Tuckahoe Drive, unnumbered
Hillcrest Drive, unnumbered
3 unnumbered parcels on Old Matthews Road
5 unnumbered parcels on Hobart Street
Lincoln Street, unnumbered
7 unnumbered parcels on McKinley Street
Free Silver Road, unnumbered
West Trinity Lane, unnumbered
Vistaview Drive, unnumbered
3 unnumbered parcels on Cross Street
2 unnumbered parcels on Swinging Bridge Road
4984 Bull Run Road
Eatons Creek Road, unnumbered
2 unnumbered parcels on Harvard Avenue
1701 McKinney Avenue
2409 Middle Street
1824 12th Av N.
1726 Delta Av
1632 Dr. D.B. Todd Jr. Blvd
303 Taylor Street
18th Av N
1822 D. B. Todd Jr. Blvd
1013 9th Avenue North
420 Ewing Lane
407 Ewing Lane

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ORDINANCE NO. BL2006-938 (continued)

2 unnumbered parcels on Capitol View Avenue
Ward Street, unnumbered
26 Garden Street
1410 Hynes Street
2900 Felicia Street

All of these parcels were acquired by the Metropolitan Government as a result of the property owner's failure to pay delinquent property taxes. This ordinance has been referred to the planning commission.

There is a proposed amendment for this ordinance that would remove all of the properties located within the 19th council district.

ORDINANCE NOS. BL2006-939 through BL2006-942 – These four ordinances abandon water and sewer lines and easements that are no longer needed by the department of water and sewerage services. These ordinances have been approved by the planning commission.

Ordinance No. BL2006-939 (Foster and Toler) abandons an 8 inch water line and easement at Nippers Corner – Phase two. The existing water line will be replaced by a new 8 inch water line.

Ordinance No. BL2006-940 (Wallace) abandons an 8 inch sanitary sewer line and easement at the Jones Paideia School. This sewer line will be converted over to a private line.

Ordinance No. BL2006-941 (Toler and Whitmore) abandons an 8 inch sanitary sewer line and easement at Park West Court and Long Boulevard. This sewer line will be replaced by a new sewer line of equal size.

Ordinance No. BL2006-942 (Toler and Whitmore) abandons an 18 inch water line easement at Graymont Park and Parthenon Avenue. This water line will be replaced with a water line of equal size.

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- BILLS ON THIRD READING -

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, as amended, 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. BL2005-921 (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 purchase price of the property and annual gross income from the property.

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. BL2006-928 (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.

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. Under Tennessee law, 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.

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

- 849 Briley Parkway
- 317 Seven Springs Way

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

- 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

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

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

Ordinance No. BL2006-935 (Toler, Wallace & 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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MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: **February 7, 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 on January 6, 2006. On January 18, 2006, the director of law issued an opinion that the Frost Brown Todd LLC opinion is acceptable in all respects to Metro to provide the protection against financial liability on the part of the Metropolitan Government as outlined in the MOU.

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

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