

**File #:** 2016-01081

**Consent Item 05**

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**Title: Agreement with SBH Natomas LLC for Payment of a One-Time Special Tax**

**Recommendation:** Pass a Motion 1) approving an agreement with SBH Natomas LLC for payment of a one-time special tax over 12 years; and 2) authorizing the Interim City Treasurer to sign the agreement on the City's behalf.

**Location:** District 1

**Contact:** Colin Bettis, Debt Analyst, (916) 808-8292; Brian Wong, Debt Manager, (916) 808-5811; John Colville, Interim City Treasurer, (916) 808-8297, Office of the City Treasurer

**Presenter:** None

**Department:** City Treasurer's Office

**Attachments:**

1-Description/Analysis

2-Agreement for Payment of a One-Time Special Tax

## Description/Analysis

**Issue Detail:** The City owns the 100.4-acre stadium parcel that is immediately north of Sleep Train Arena in North Natomas. Under the Property Conveyance Agreement and Joint Escrow Instructions dated as of May 20, 2014 (City Agreement No. 2014-0507), the City is to transfer the stadium parcel to an affiliate of the Sacramento Kings, SBH Natomas LLC (“**SBH**”), when specified conditions have been met.

The stadium parcel is within the North Natomas Drainage Community Facilities District No. 97-01 (the “**CFD**”), which financed “backbone” drainage infrastructure in North Natomas by issuing bonds backed by an annual special tax levied in accordance with the CFD’s Rate and Method of Apportionment of Special Tax (the “**RMA**”). While owned by the City, the stadium parcel has not been taxed. But that will change when SBH takes title. Under the RMA, when a private owner acquires the stadium parcel, the new owner will become liable for a one-time tax equal to the tax that would have been paid over the years had the stadium parcel been privately owned rather than owned by the City.

SBH is scheduled to take title on September 30, 2016. The attached agreement allows SBH to pay the one-time tax in annual installments over 12 years, with interest at the City’s Pool A rate.

**Policy Considerations:** Not Applicable

**Economic Impacts:** Not Applicable

**Environmental Considerations:** The City Council’s approval of the attached agreement does not constitute a “project” for purposes of the California Environmental Quality Act because it does not involve an activity that will have a significant effect on the environment. (14 Cal. Code Regs. §§ 15061(b)(3) and 15378(b)(4) & (5).)

**Sustainability:** Not Applicable

**Commission/Committee Action:** Not Applicable

**Rationale for Recommendation:** Although the RMA requires SBH to pay of this one-time special tax, it does not specify the terms of payment, leaving that to the City’s discretion.

**Financial Considerations:** Under the agreement, SBH will pay the one-time special tax in 12 annual installments with interest calculated using the City’s Pool A rate for the completed fiscal year immediately preceding each installment. The City will allocate the proceeds of the one-time tax according to the following priority: (1) Redemption Fund, (2) Bond Reserve Fund, (3)

Expense Fund, (4) Prepayment Fund, and (5) Community Facilities Fund. Proceeds deposited into the Redemption Fund will be used to pay debt service on the CFD's outstanding bonds, thereby reducing the amount of special taxes levied on other taxpayers within the CFD. Proceeds deposited into the Community Facilities Fund will be available for use on approved projects within the CFD in accordance with the RMA.

**Local Business Enterprise (LBE):** Not Applicable

**Background:** Bonds were issued for this CFD in three series of new-money issues beginning in 1997 to finance the acquisition and construction of certain storm-water drainage improvements (levees, channel improvements, pumping plants, and all necessary appurtenances thereto and rights in real and personal property therefor) and land for habitat mitigation. Since then, bonds have been issued to refund the prior bonds and reduce the tax on other property within the CFD.

**Agreement for Payment of One-Time Special Tax**  
**North Natomas Drainage Community Facilities District No. 97-01**

This *Agreement for Payment of One-Time Special Tax*, dated September 27, 2016, for reference, is between the CITY OF SACRAMENTO, a California municipal corporation (the “City”); and SBH NATOMAS LLC, a Delaware limited-liability company (“SBH”).

**Background**

The City owns the 100.4-acre stadium Parcel in North Natomas that is identified in Exhibit A to this agreement (the “**Stadium Parcel**”). Under the *Property Conveyance Agreement and Joint Escrow Instructions* dated as of May 20, 2014 (City Agreement No. 2014-0507), the City is to transfer the Stadium Parcel to SBH when specified conditions have been met or on a date that “is mutually agreed upon by the Parties.”

The Stadium Parcel is within North Natomas Drainage Community Facilities District No. 97-01 (the “**CFD**”), which financed “backbone” drainage infrastructure in North Natomas by issuing bonds backed by an annual special tax levied in accordance with the CFD’s Rate and Method of Apportionment of Special Tax (the “**RMA**”). The RMA subjects the Stadium Parcel to two different taxes: an annual tax used to pay debt service on the bonds; and a one-time tax, calculated at the “Undeveloped Rate,” that will be assessed and owing when the City transfers the Stadium Parcel to a private owner. The RMA also provides that the Stadium Parcel is exempt from both taxes while owned by the City. But once the Stadium Parcel is transferred to a private owner such as SBH, the annual tax will apply (at the RMA rate for a “Developed Parcel”), and the one-time tax will become due, with the amount of the one-time tax calculated using the total annual taxes that *would have been* levied over the years had some private entity and not the City owned the Stadium Parcel.

Because the RMA does not specify when the one-time tax must be paid, the City and SBH have entered into this agreement to provide for payment in installments over 12 years.

***With these background facts in mind, the parties hereby agree as follows:***

1. **Installment Payments.** In accordance with section 4.E of the RMA, on the day SBH takes title to the Stadium Parcel, SBH will become liable to the City for a one-time special tax of \$658,826. SBH shall pay this tax in installments over 12 years, as follows:
  - 1.1. On or before October 10 of each year during the term of this agreement, the City Treasurer’s Office shall invoice SBH for that year’s installment, consisting of the principal amount of the one-time tax owed for the year, as set forth in Exhibit B to this agreement, plus the interest that accrued on the outstanding balance of the one-time tax, i.e., \$658,826 minus principal amounts previously paid (the “**Outstanding Balance**”), calculated in accordance with section 1.2.

- 1.2. The City Treasurer's Office shall calculate the accrued interest by multiplying the following factors and then rounding the resulting product to the nearest dollar:
- (A) The Outstanding Balance.
  - (B) The City's Pool A interest rate (which the City Treasurer's Office will determine) for the City's immediately preceding fiscal year (July 1 through June 30).
  - (C) For the first-year installment, a time factor equal to 70 (i.e., the number of days from October 1, 2016, to December 9, 2016) divided by 360. For each succeeding installment, the time factor is 1.0, because interest will accrue from the due date of the prior year's installment.

1.3. Sample calculations:

- (A) The principal amount owed for the first year is \$54,902. Because the Pool A rate for the previous fiscal year (2015-16) was 1.11%, the accrued interest on the Outstanding Balance in the first year is \$1,422 (i.e.,  $0.0111 \times [\$658,826 - 0] \times [70 \div 360] = \$1,421.97$ ), and the first-year installment is \$56,324 (i.e.,  $\$54,902 + \$1,422$ ).
- (B) The principal amount owed for the third year is \$54,902. If the Pool A rate for the previous fiscal year (2017-18) were 1.17%, then the accrued interest on the Outstanding Balance in the third year would be \$6,424 (i.e.,  $0.0117 \times [\$658,826 - \{2 \times \$54,902\}] \times 1.0 = \$6,423.56$ ), and the third-year installment due would be \$61,326 (i.e.,  $\$54,902 + \$6,424$ ).

1.4. SBH shall pay each installment invoiced no later than December 10 of the year for which the installment is owed by a check payable to the City and mailed or delivered to the address specified in section 5 below for giving notices to the City.

2. **Delinquencies.** An installment will be delinquent unless the payment is postmarked by the due date shown in Exhibit B and is actually received or unless, for a payment that is not mailed, the payment is delivered by the due date shown in Exhibit B. An installment will also be delinquent if SBH's check for the installment does not clear the City's bank. SBH will have 30 days after receiving the City's notice of delinquency to pay the delinquent installment plus a 10% late fee. If SBH fails to pay the delinquent installment and late fee within the 30-day period, then SBH will be in breach of this agreement, and the City may pursue any or all of the remedies set forth in section 4 below.

3. **SBH's Transfer of Stadium Parcel to Third Party.** SBH shall notify the City at least 30 days before SBH sells or transfers the Stadium Parcel or a portion of the Stadium Parcel to a third party. Within 15 days after receiving SBH's notice, the City Treasurer's Office shall notify SBH of the amount SBH owes under section 3.1 or 3.2, as applicable unless section 3.4 applies. On the date the sale or transfer closes, SBH shall pay the City the amount set forth in the

City's notice. Payment may be wired in accordance with the City's instructions (if paid through escrow) or may be made by a check payable to the City and mailed or delivered to the address specified in section 5 below for giving notices to the City. The amount owed under section 3.1 or 3.2 will be considered paid only if the City actually receives the wired funds or, when payment is by check, if the City receives the check and the check clears the City's bank.

3.1. If SBH sells or otherwise transfers the entire Stadium Parcel to a third party, then SBH shall pay the entire Outstanding Balance plus accrued interest on the Outstanding Balance. The City Treasurer's Office will calculate the interest owed under this section 3.1 by multiplying the following factors and then rounding the resulting product to the nearest dollar:

- (A) The entire Outstanding Balance.
- (B) The City's Pool A interest rate (which the City Treasurer's Office will determine) for the City's immediately preceding fiscal year (July 1 through June 30).
- (C) The number of days from the due date of the most recently paid installment to the date the sale or transfer closes (using a 360-day year and not counting the due date).

3.2. If SBH sells or otherwise transfers a portion of the Stadium Parcel to a third party, then SBH shall pay the pro rata share of Outstanding Balance (determined in proportion to acreage) plus accrued interest on the pro rata share. The City Treasurer's Office will calculate the interest owed under this section 3.2 by multiplying the following factors and then rounding the resulting product to the nearest dollar:

- (A) The pro rata share of Outstanding Balance (i.e., [ $\$658,826$  minus principal amounts previously paid]  $\times$  [acreage of the sold or transferred portion  $\div$  100.4 acres]).
- (B) The City's Pool A interest rate (which the City Treasurer's Office will determine) for the City's immediately preceding fiscal year (July 1 through June 30).
- (C) The time from the due date of the most recently paid installment to the date the sale or transfer closes (using a 360-day year and not counting the due date).

3.3. Each amount that SBH owes the City under this section 3 will be delinquent if the amount is not wired to the City on the date the sale or transfer closes or, when payment is by check, if the City does not receive the check within 10 days after the date the sale or transfer closes or the check is received but does not clear the City's bank. SBH will have 30 days after receiving the City's notice of delinquency to pay the delinquent amount plus a late fee equal to 10% of the delinquent amount. If SBH fails to pay the delinquent amount and late fee within the 30-day period, or if SBH fails to

notify the City of a sale or transfer as required by this section 3, then SBH will be in breach of this agreement, and the City may pursue any or all of the remedies set forth in section 4 below.

3.4. Neither section 3.1 nor section 3.2 will apply if both of the following are satisfied:

- (A) SBH sells or transfers the Stadium Parcel or a portion of the Stadium Parcel to a subsidiary or affiliate.
- (B) SBH, the City, and the subsidiary or affiliate enter into a written agreement, acceptable to the City, by which (1) SBH assigns its rights and obligations under this agreement to the affiliate or subsidiary and (2) the affiliate or subsidiary assumes SBH's rights and obligations. If only a portion of the Stadium Parcel is sold or transferred, then the assignment and assumption will pertain only to that portion, and the installment payments owed under section 1 will be allocated pro rata (according to acreage) to the portion of the Stadium Parcel retained by SBH and the portion sold or transferred.

4. **Remedies for Breach.** If SBH breaches this agreement, then City may pursue any or all available legal or equitable remedies. In addition, the City may elect, in its sole discretion, to demand SBH's immediate payment of the entire Outstanding Balance plus accrued interest on the sum of the Outstanding Balance and any late fee owed under section 2 or 3.3. The City Treasurer's Office will calculate the interest by multiplying the following factors and then rounding the resulting product to the nearest dollar:

- 4.1. The entire Outstanding Balance plus any late fees owed.
- 4.2. The City's Pool A interest rate (which the City Treasurer's Office will determine) for the City's immediately preceding fiscal year (July 1 through June 30) plus the 5-year U.S. Treasury Rate in effect at the time of calculation.
- 4.3. The number of days from the due date of the most recently paid installment to the date the City obtains a final judgment against SBH (using a 360-day year and not counting the due date).

5. **Notices.** Notices and invoices given under this agreement must be in writing and will be considered properly given and effective only when mailed or delivered in the manner provided by this section 5 to the persons identified below. A notice or invoice that is mailed will be effective or will be considered to have been given on the third day after it is deposited in the U.S. Mail (certified mail and return receipt requested), addressed as set forth below, with postage prepaid. A notice or invoice sent in any other manner will be effective or will be considered properly given when actually delivered. A party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this section 5.

*If to the City:*

City of Sacramento  
Office of the City Treasurer  
915 I Street, Historic City Hall, 3rd Floor  
Sacramento, California 95814  
Attention: Brian Wong, Debt Manager

*If to SBH:*

SBH Natomas LLC  
One Sports Parkway  
Sacramento, CA 95834  
Attention: John Rinehart, CFO

*with a copy to—*

Pioneer Law Group, LLP  
1122 S Street  
Sacramento, CA 95811  
Attention: Jeffrey K. Dorso

**6. Assignments.** SBH may not assign or otherwise transfer this agreement or any interest in it without the City's prior written consent, which the City may not withhold, delay, or condition unreasonably. An assignment or other transfer made contrary to this section 6 is void and will constitute a breach of this agreement. Upon such a breach, the City may, at its sole discretion, notify SBH that the entire Outstanding Balance is due immediately with accrued interest calculated in accordance with section 1.2 above, except that the time factor will be equal to the number of days from the due date of the most recently paid installment to the date of the City's notice (not counting the due date) divided by 360.

**7. Miscellaneous.**

7.1. *Time of essence.* Time is of the essence in the performance of this agreement.

7.2. *Waiver.* A party's failure to insist on strict performance of this agreement or to exercise any right or remedy upon breach of this agreement will not constitute a waiver of the performance, right, or remedy. A party's waiver of another party's breach of any provision in this agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision. A waiver is binding only if set forth in a writing signed by the waiving party.

7.3. *Binding effect.* This agreement binds and inures to the benefit of the parties' successors and assigns.

7.4. *Severability.* If a court with jurisdiction rules that any nonmaterial part of this agreement is invalid, unenforceable, or contrary to law or public policy, then the rest of this agreement remains valid and fully enforceable.

7.5. *Interpretation.* This agreement is to be interpreted and applied in accordance with California law, except that that the rule of interpretation in California Civil Code section 1654 will not apply.

(A) As used in this agreement, "**sole discretion**" means that the City may elect to accelerate payment of the Outstanding Balance based solely on its own,

unfettered assessment of its own interests and without considering how its decision affects SBH. Such an election will not be constrained by the implied covenant of good faith and fair dealing.

(B) Exhibits A and B are part of this agreement.

- 7.6. *Attorneys' fees.* The parties shall bear their own costs and attorneys' fees incurred in connection with this agreement.
- 7.7. *No third-party beneficiaries.* This agreement is solely for the benefit of the City and SBH. It is not intended to benefit any third parties.
- 7.8. *Effective date.* This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.
- 7.9. *Counterparts.* The parties may sign this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement. Delivery of signed counterparts may be accomplished email transmission of a PDF file.
- 7.10. *Integration and modification.* This agreement sets forth the parties' entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations—written, oral, express, or implied—and may be modified only by another written agreement signed by both parties.

*(Signature Page Follows)*

**City of Sacramento**

**SBH Natomas LLC**

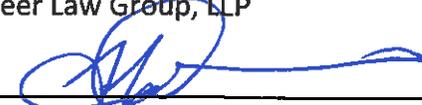
By: \_\_\_\_\_  
John P. Colville  
Interim City Treasurer  
Date: September \_\_, 2016

By:  \_\_\_\_\_  
John Rinehart  
Chief Financial Officer  
Date: September \_\_, 2016

Attest  
Sacramento City Clerk

Approved as to Form  
Pioneer Law Group, LLP

By: \_\_\_\_\_  
Signature

By:  \_\_\_\_\_  
Jeffrey K. Dorso  
Attorneys for SBH Natomas LLC

Approved as to Form  
Sacramento City Attorney

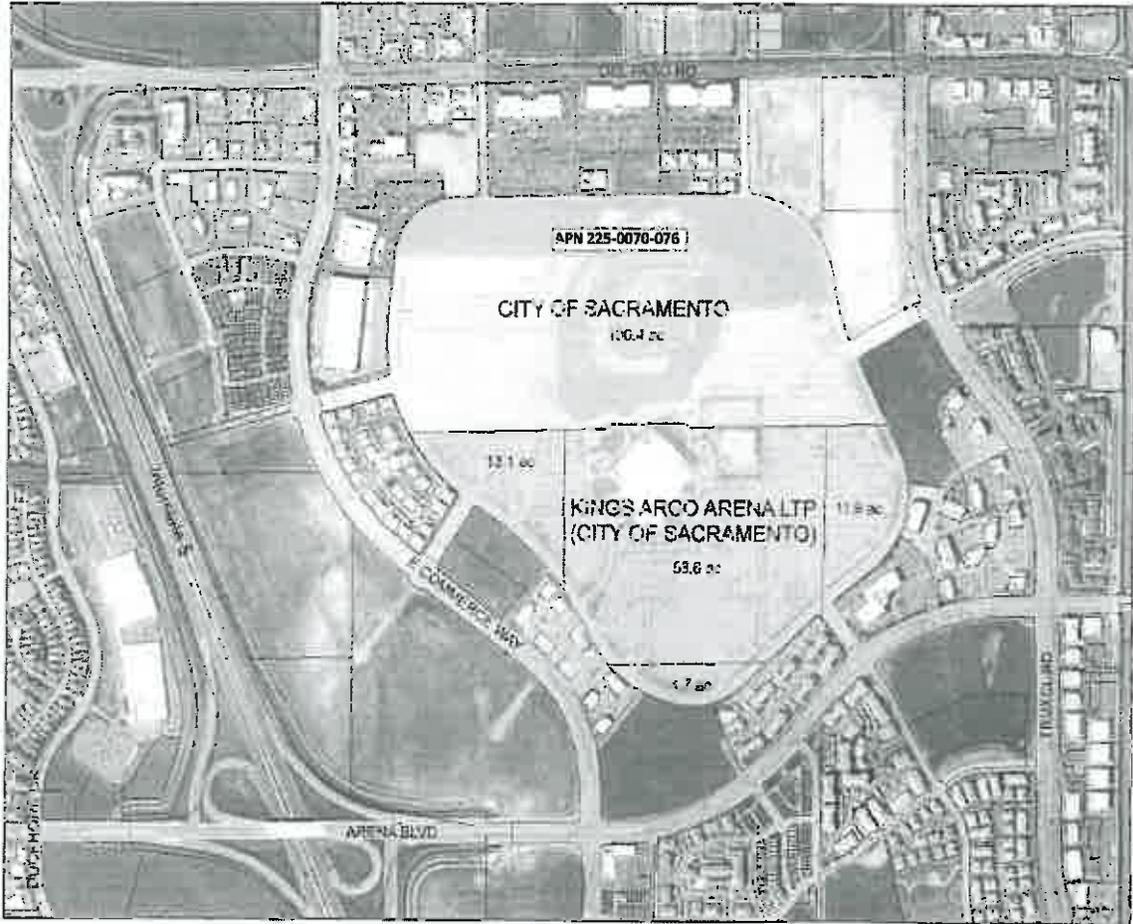
By: \_\_\_\_\_  
Joseph Cerullo Jr.  
Senior Deputy City Attorney

**Agreement for Payment of One-Time Special Tax  
North Natomas Drainage Community Facilities District No. 97-01**

**Exhibit A**

**Property Description**

**APN 225-0070-076**



**Agreement for Payment of One-Time Special Tax  
North Natomas Drainage Community Facilities District No. 97-01**

**Exhibit B**

**Schedule of Payments**

	<b>Year*</b>	<b>Payment Due Date</b>	<b>Principal Amount</b>
<b>1</b>	(2016-17)	December 10, 2016	\$54,902
<b>2</b>	(2017-18)	December 10, 2017	\$54,902
<b>3</b>	(2018-19)	December 10, 2018	\$54,902
<b>4</b>	(2019-20)	December 10, 2019	\$54,902
<b>5</b>	(2020-21)	December 10, 2020	\$54,902
<b>6</b>	(2021-22)	December 10, 2021	\$54,902
<b>7</b>	(2022-23)	December 10, 2022	\$54,902
<b>8</b>	(2023-24)	December 10, 2023	\$54,902
<b>9</b>	(2024-25)	December 10, 2024	\$54,902
<b>10</b>	(2025-26)	December 10, 2025	\$54,902
<b>11</b>	(2026-27)	December 10, 2026	\$54,902
<b>12</b>	(2027-28)	December 10, 2027	\$54,904 <sup>†</sup>
<b>Total</b>			<b><u><u>\$658,826</u></u></b>

\* October 1 through September 30.

† The principal amount for year 12 differs by \$2 from the other principal amounts to account for rounding.