



City Council Report

915 I Street, 1st Floor
Sacramento, CA 95814

www.cityofsacramento.org

File #: 2016-01520

December 13, 2016

Consent Item 02

Title: (City Council / Redevelopment Agency Successor Agency / Sacramento City Financing Authority) Tax Remediation of Private Use Associated with Parcels to be Transferred from the City of Sacramento to Sacramento Basketball Holdings, Inc. (800 K and L Street Parcels)

Recommendation: Pass 1) a City Council Resolution; 2) a Redevelopment Agency Successor Agency Resolution; and 3) a Sacramento City Financing Authority Resolution authorizing the execution and delivery of a supplemental tax certificate relating to the transfer of parcels and the use of proceeds from the sale, and approving certain other actions in connection therewith.

Location: District 4

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

Presenter: None

Department: City Treasurer

Attachments:

- 1-Description/Analysis
- 2-City Council Resolution
- 3-Redevelopment Agency Successor Agency Resolution
- 4-Sacramento City Financing Authority Resolution
- 5-Exhibit A – Supplemental Tax Certificate

Description/Analysis

Issue Detail: On October 18, 2016, the City Council approved the sale of parcels on 800 block of K and L Street (the “**Parcels**”) to 800 Block Partners, LLC, an affiliate of SBH Real Estate Group LLC. Specifically, the Parcels are 800-816 K Street, 1109-1125 8th Street, and 808-815 L Street. The Parcels were originally acquired by the former Redevelopment Agency of the City of Sacramento (the “**Redevelopment Agency**”) with tax-exempt bond proceeds from the 2005 Tax Allocation Revenue Bonds, Series A (the “**2005 TABs**”). The original intended use for the Parcels was for the development of mid-rise mixed-use buildings containing retail on the ground floor and residential units above.

Generally, the proceeds from tax-exempt bonds must be expended on capital projects that serve a governmental or government-related purpose, although a small portion of proceeds (typically not more than 10%) may be devoted to “private business use.” In this instance, all of the available private business use of the 2005 TABs (including the portion of the bonds that had been partially refunded by the 2015 Tax Allocation Refunding Revenue Bonds, Series A) has been exhausted.

800 Block Partners, LLC is a non-governmental entity, and its proposed use of the Parcels as a mixed-use of retail and residential will be unrelated to any governmental purpose. Because IRS regulations require that the City “remediate” the resulting private use by using the sale proceeds as if they were proceeds from tax-exempt bonds, the sale proceeds must be used to fund other governmental use capital improvements. In addition, because the 2005 TABs are redevelopment-related bonds, the capital improvements to be acquired or constructed must be located in or directly benefit the Merged Downtown Redevelopment Project Area, i.e., the same redevelopment project area for which the 2005 TABs were issued.

Policy Considerations: The disposition of the Parcels is consistent with the Redevelopment Agency Successor Agency’s (“**RASA**”) mandate to wind down the activities of the former Redevelopment Agency by divesting RASA of the former Redevelopment Agency’s property assets. The mixed-use development project planned by the 800 Block Partners, LLC conforms to the goals of the Merged Downtown Redevelopment Plan. Remediation of the private activity related to the disposition of the Parcels is needed to ensure compliance with the IRS’s private-activity threshold for the 2005 TABs. Failure to remediate could jeopardize the tax-exempt status of other projects financed by the 2005 TABs.

Economic Impacts: Not applicable.

Environmental Considerations: Approval of the recommendation is not a “project” subject to CEQA because it (a) has no potential to cause a significant effect on the environment and (b)

concerns governmental fiscal activities that do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. (14 Cal. Code Regs. §§ 15061(b)(3) and 15378(b)(4)).

Sustainability: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: The actions requested are necessary to implement the close of escrow for the Parcels, anticipated in late-December 2016.

Financial Considerations: The proceeds from the sale of the Parcels must be expended in compliance with Treasury Regulation § 1.141-12(e). Staff has identified, for the use of the sale proceeds, existing projects that either are within the Merged Downtown project area or will serve the Merged Downtown project area. Fund 3820 will allow for the tracking of expenditures from the proceeds received by the City.

Local Business Enterprise (LBE): Not applicable.

RESOLUTION NO. 2016-XXXX

Adopted by the Sacramento City Council

December 13, 2016

AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A SUPPLEMENTAL TAX CERTIFICATE, (2) THE TRANSFER OF FUNDS BETWEEN VARIOUS PROJECTS, AND (3) THE EXPENSE BUDGET FOR EXPECTED PROCEEDS

BACKGROUND:

- A.** In 2005, the Sacramento City Financing Authority issued its 2005 Tax Allocation Bonds, Series A (the “**2005 TABs**”) and loaned a portion of the proceeds to the Redevelopment Agency of the City of Sacramento for use in financing projects within the Merged Downtown Redevelopment Project Area.
- B.** In 2015, the Redevelopment Agency Successor Agency issued the 2015 Tax Allocation Refunding Revenue Bonds, Series A (the “**2015 Refunding TABs**”) to refund certain outstanding bonds or portions of outstanding bonds. The 2015 Refunding TABs refunded \$20,500,000 of the 2005 TABs (which were callable), but did not refund the portion of the 2005 TABs that were issued as non-callable capital-appreciation bonds.
- C.** Concurrently with the issuance of both the 2005 TABs and the 2015 Refunding TABs, the issuer executed a tax certificate for the bonds.
- D.** On October 18, 2016, the City approved the sale of certain parcels that were previously acquired using proceeds from the 2005 TABs. This sale is to a private entity (800 Block Partners, LLC, an affiliate of SBH Real Estate Group LLC), so Treasury Regulation § 1.141-12(e) requires that the City “remediate” the disposition proceeds in an amount not to exceed \$5,647,000 (the “**Disposition Proceeds**”). “Remediate” means that the Disposition Proceeds must be used as if they were proceeds from tax-exempt bonds.
- E.** City staff have identified current projects that will be sufficient for the remediation of the Disposition Proceeds.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1.** The Interim City Treasurer is hereby authorized, on the City’s behalf, to execute and deliver the Supplemental Tax Certificate pertaining to both the outstanding 2005 TABs and the 2015 Refunding TABs.
- Section 2.** City staff are authorized to make the necessary budget amendments and applicable fund transfers between the General Fund (Fund 1001) and the

Merged Downtown Redevelopment Tax-exempt Bond Funds (Fund 3820) in the Old Sacramento Infrastructure (C13000730) and Fire Station 14 (F13000810) projects in an amount not to exceed \$5.647 million to remediate private activity associated with the Disposition Proceeds as required by Treasury Regulation § 1.141-12(e).

Section 3. This resolution takes effect when adopted.

RESOLUTION NO. 2016-XXXX

Adopted by the Redevelopment Agency Successor Agency of the dissolved
Redevelopment Agency of the City of Sacramento

December 13, 2016

AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A SUPPLEMENTAL TAX CERTIFICATE, (2) THE TRANSFER OF FUNDS BETWEEN VARIOUS PROJECTS, AND (3) THE EXPENSE BUDGET FOR EXPECTED PROCEEDS

BACKGROUND:

- A.** In 2005, the Sacramento City Financing Authority issued its 2005 Tax Allocation Bonds, Series A (the “**2005 TABs**”) and loaned a portion of the proceeds to the Redevelopment Agency of the City of Sacramento for use in financing projects within the Merged Downtown Redevelopment Project Area.
- B.** In 2015, the Redevelopment Agency Successor Agency issued the 2015 Tax Allocation Refunding Revenue Bonds, Series A (the “**2015 Refunding TABs**”) to refund certain outstanding bonds or portions of outstanding bonds. The 2015 Refunding TABs refunded \$20,500,000 of the 2005 TABs (which were callable), but did not refund the portion of the 2005 TABs that were issued as non-callable capital-appreciation bonds.
- C.** Concurrently with the issuance of both the 2005 TABs and the 2015 Refunding TABs, the issuer executed a tax certificate for the bonds.
- D.** On October 18, 2016, the City approved the sale of certain parcels that were previously acquired using proceeds from the 2005 TABs. This sale is to a private entity (800 Block Partners, LLC, an affiliate of SBH Real Estate Group LLC), so Treasury Regulation § 1.141-12(e) requires that the City “remediate” the disposition proceeds in an amount not to exceed \$5,647,000 (the “**Disposition Proceeds**”). “Remediate” means that the Disposition Proceeds must be used as if they were proceeds from tax-exempt bonds.
- E.** City staff have identified current projects that will be sufficient for the remediation of the Disposition Proceeds.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE SUCCESSOR AGENCY RESOLVES AS FOLLOWS:

- Section 1.** The Interim City Treasurer is hereby authorized, on the Successor Agency’s behalf, to execute and deliver the Supplemental Tax Certificate pertaining to both the outstanding 2005 TABs and the 2015 Refunding TABs.

Section 2. This resolution takes effect when adopted.

RESOLUTION NO. 2016-XXXX

Adopted by the Sacramento City Financing Authority

December 13, 2016

AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A SUPPLEMENTAL TAX CERTIFICATE, (2) THE TRANSFER OF FUNDS BETWEEN VARIOUS PROJECTS, AND (3) THE EXPENSE BUDGET FOR EXPECTED PROCEEDS

BACKGROUND:

- A.** In 2005, the Sacramento City Financing Authority issued its 2005 Tax Allocation Bonds, Series A (the “**2005 TABs**”) and loaned a portion of the proceeds to the Redevelopment Agency of the City of Sacramento for use in financing projects within the Merged Downtown Redevelopment Project Area.
- B.** In 2015, the Redevelopment Agency Successor Agency issued the 2015 Tax Allocation Refunding Revenue Bonds, Series A (the “**2015 Refunding TABs**”) to refund certain outstanding bonds or portions of outstanding bonds. The 2015 Refunding TABs refunded \$20,500,000 of the 2005 TABs (which were callable), but did not refund the portion of the 2005 TABs that were issued as non-callable capital-appreciation bonds.
- C.** Concurrently with the issuance of both the 2005 TABs and the 2015 Refunding TABs, the issuer executed a tax certificate for the bonds.
- D.** On October 18, 2016, the City approved the sale of certain parcels that were previously acquired using proceeds from the 2005 TABs. This sale is to a private entity (800 Block Partners, LLC, an affiliate of SBH Real Estate Group LLC), so Treasury Regulation § 1.141-12(e) requires that the City “remediate” the disposition proceeds in an amount not to exceed \$5,647,000 (the “**Disposition Proceeds**”). “Remediate” means that the Disposition Proceeds must be used as if they were proceeds from tax-exempt bonds.
- E.** City staff have identified current projects that will be sufficient for the remediation of the Disposition Proceeds.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE SACRAMENTO CITY FINANCING AUTHORITY RESOLVES AS FOLLOWS:

Section 1. The Interim City Treasurer is hereby authorized, on the Sacramento City Financing Authority’s behalf, to execute and deliver the Supplemental Tax Certificate pertaining to both the outstanding 2005 TABs and the 2015 Refunding TABs.

Section 2. This resolution takes effect when adopted.

**SUPPLEMENTAL TAX CERTIFICATE
REGARDING SALE OF 800 K STREET PROPERTIES**

**REDEVELOPMENT AGENCY
SUCCESSOR AGENCY OF
THE CITY OF SACRAMENTO**

**SACRAMENTO CITY FINANCING
AUTHORITY**

**\$62,135,000
2015 TAX ALLOCATION REFUNDING
BONDS,
SERIES A (TAX-EXEMPT)**

**\$92,372,235.75
2005 TAX ALLOCATION REVENUE
BONDS,
SERIES A (MERGED DOWNTOWN
AND OAK PARK PROJECTS)**

This Supplemental Tax Certificate (the “**Supplemental Tax Certificate**”) is being executed and delivered by the Sacramento City Financing Authority (the “**Authority**”), the City of Sacramento (the “**City**”), and the Redevelopment Agency Successor Agency of the dissolved Redevelopment Agency of the City of Sacramento (the “**Agency**”) in connection with the sale of properties located at the 800 block of K Street, in Sacramento, California (the “**800 K Properties**”). The acquisition of the 800 K Properties was financed in part with proceeds of the Authority’s 2005 Tax Allocation Revenue Bonds, Series A (Merged Downtown and Oak Park Projects) (the “**2005A TABs**”). A portion of the 2005A TABs were refunded by the Agency’s 2015 Tax Allocation Refunding Bonds, Series A (Tax-Exempt) (the “**2015 Refunding TABs**”).

This Supplemental Tax Certificate is being delivered to Orrick, Herrington & Sutcliffe LLP (“**Bond Counsel**”) with the understanding that Bond Counsel will rely on the representations, certifications and covenants set forth herein for purposes of rendering its opinion that the sale of the 800 K Properties will not adversely affect the tax-exempt status of interest on the 2005A TABs and the 2015 Refunding TABs.

1. BACKGROUND

1.1. The Agency. Pursuant to the Community Redevelopment Law (Part 1 of Division 24 of the California Health and Safety Code), the City Council of the City created the former Redevelopment Agency of the City of Sacramento (the “**Redevelopment Agency**”). The Redevelopment Agency had the general authority to exercise the power of eminent domain and to issue bonds to further its governmental purposes. On February 1, 2012, the Redevelopment Agency was terminated pursuant to state law, and the termination required a successor agency to be appointed. The City has agreed to serve as the successor agency.

1.2. 2005A TABs. The 2005A TABs were issued by the Authority on December 7, 2005, and the Authority loaned the proceeds of the 2005A TABs to the Redevelopment Agency under a loan agreement relating to the Merged Downtown Project Area (the “**2005 Merged Downtown Loan Agreement**”) and a loan agreement relating to the Oak Park Redevelopment Project Area (the “**2005 Oak Park Loan Agreement**”). The proceeds loaned under the Merged Downtown Loan Agreement were used to finance projects within the Merged Downtown Redevelopment Project Area (the “**Merged Downtown Projects**”), and the proceeds loaned under the Oak Park Loan Agreement were used to finance projects within the Oak Park Redevelopment Project Area (the “**Oak Park Projects**,” and together with the Merged Downtown Projects, the “**Projects**”). The

2005A TABs were issued as callable current interest bonds and certain non-callable capital appreciation bonds.

In connection with the issuance of the 2005A TABs, the Issuer and the Redevelopment Agency executed a Tax Certificate (the “**2005A TABs Tax Certificate**”), in which the Issuer and the Redevelopment Agency made certain representations regarding the uses of the Projects to be financed with proceeds of the 2005A TABs. Section 2.3 of the 2005A TABs Tax Certificate included a representation that the Authority and the Redevelopment Agency would not allow more than 10% of the proceeds of the 2005A TABs or the Projects financed by the 2005A TABs to be used in the trade or business of a nongovernmental person. Section 6.2 of the 2005A TABs Tax Certificate provides that the Authority and the Redevelopment Agency may amend the 2005A TABs Tax Certificate and alter any actions allowed or required if such amendment is signed by an authorized officer and is supported by an opinion of counsel to the effect that the exclusion from gross income for federal income tax purposes of interest on the 2005A TABs will not be adversely affected.

No more than \$11,607,141.43 of the proceeds of the 2005A TABs loaned to the Redevelopment Agency pursuant to the 2005 Merged Downtown Loan Agreement were used to finance the acquisition of certain parcels that make up the 800 K Properties.

1.3. Prior Remedial Action; Reissuance of Portion of 2005A TABs. The Merged Downtown Projects financed with the 2005A TABs included a residential hotel known as the Hotel Berry. As documented in the supplemental tax certificate executed on December 7, 2010, the Hotel Berry was sold to a Section 501(c)(3) organization and the portion of the 2005A TABs allocable to financing the Hotel Berry was treated as reissued pursuant to Treasury Regulations Section 1.141-12(f).

1.4. 2015 Refunding TABs. On October 14, 2015, the Agency issued the 2015 Refunding TABs to refund certain outstanding bonds or portions of outstanding bonds issued for the benefit of the Redevelopment Agency. The 2015 Refunding TABs refunded \$20,500,000 of the 2005A TABs (which were callable), but did not refund the portion of the 2005A TABs that were issued as non-callable capital appreciation bonds.

In connection with the issuance of the 2015 Refunding TABs, the Agency executed a Tax Certificate (the “**2015 TABs Tax Certificate**”), in which the Agency made certain representations regarding the uses of the projects to be refinanced with proceeds of the 2015 Refunding TABs. Section 2.3 of the 2015 TABs Tax Certificate included a representation that no more than 10% of the proceeds of the 2005A TABs had been spent on projects that were used in the trade or business of a nongovernmental person and where the Agency or the Redevelopment Agency expected to receive or actually received any payments from the users of such projects. Section 2.4 of the 2015 TABs Tax Certificate provided that, absent an opinion of counsel, the Agency would use all bond proceeds and each facility refinanced from bond proceeds as set forth in Section 2.2. Section 6.2 of the 2005A TABs Tax Certificate provides that the Authority and the Redevelopment Agency may amend the 2005A TABs Tax Certificate and alter any actions allowed or required if such amendment is signed by an authorized officer and is supported by an opinion of counsel to the effect that the exclusion from gross income for federal income tax purposes of interest on the 2005A TABs will not be adversely affected.

2. REMEDIAL ACTION

2.1. Sale of 800 K Properties. On the date hereof, pursuant to a coordinated set of transactions, the Agency is selling the 800 K Properties to the City for \$2,640,000, which is based on a June 2011 appraised value pursuant to state law governing dissolution of redevelopment agencies, and the City is selling the 800 K Properties to a nongovernmental third-party in a bona fide arms' length transaction, in which the purchaser is paying the current fair market value in cash for the 800 K Properties. The City expects to receive \$[5,457,120.00] from the sale of the 800 K Properties to the nongovernmental third-party, of which \$2,640,000 will be transferred to the Agency as consideration for purchase of the 800 K Properties by the City. The amount that the City actually receives from the sale of the 800 K Properties to the nongovernmental third-party is defined for purposes of this Supplemental Tax Certificate as the "**Disposition Proceeds.**"

Pursuant to state law governing redevelopment dissolution, the \$2,640,000 transferred to the Agency will be distributed (the "**Distribution**") to certain local governmental entities in proportion to their share of the former redevelopment property tax distributions (the "**Taxing Entities**"). The Taxing Entities are the City, the County of Sacramento, the Sacramento County Office of Education, the Sacramento-Yolo Mosquito & Vector Control District, the Sacramento City Unified School District, and the Los Rios Community College District.

The sale of the 800 K Properties would result in more than 10% of the proceeds of the 2005A TABs (and more than 10% of the portion of the 2015 Refunding TABs allocable to refunding the 2005A TABs) being treated as used in the trade or business of a nongovernmental person.

2.2. Conditions for Remedial Action. As described in the 2005A TABs Tax Certificate and 2015 TABs Tax Certificate, the Authority, the Redevelopment Agency, and the Agency reasonably expected that the projects financed by the 2005A TABs and refinanced by the 2015 Refunding TABs (including the 800 K Properties) would not be used in a way that would cause more than 10% of the respective amount to be treated as used in the trade or business of a nongovernmental person. The weighted-average maturity of the 2005A TABs, when issued, did not exceed 120% of the reasonably expected economic useful life of the Projects, and the weighted average maturity of the 2015 Refunding TABs does not exceed 120% of the reasonably expected economic useful life of the projects refinanced by the 2015 Refunding TABs. The Disposition Proceeds will be treated as unspent proceeds of the 2005 TABs and 2015 Refunding TABs for purposes of arbitrage and rebate requirements.

2.3. Remedial Action—Alternative Use of Disposition Proceeds. Bond Counsel has advised that, pursuant to Treasury Regulations § 1.141-12(e), the Authority, the City and the Agency may take remedial action with respect to the sale of the 800 K Properties if all Disposition Proceeds are expected to be used within two years (and are actually used within two years) to finance other projects, provided that (i) the financing of such other projects does not cause the applicable bonds to meet the private business use tests or private loan tests, (ii) no deliberate action is later taken to cause the private business use or private loan tests to be met, and (iii) the other projects financed meet the applicable federal income tax requirements for the 2005A TABs and 2015 Refunding TABs, including the requirements regarding expenditure of proceeds which would generally require the Disposition Proceeds to be spent on capital expenditures.

2.3.1. Allocation of Disposition Proceeds. The Distribution to the Taxing Entities is governed by compensation agreements with each of the Taxing Entities (the “**Compensation Agreements**”). In the Compensation Agreements, each of the Taxing Entities has agreed to treat its portion of the Distribution as tax-exempt bond proceeds and use the proceeds to finance capital expenditures within two years. However, in order to facilitate remedial action, the City has identified \$2,640,000 of its general revenues that it intends to treat as Disposition Proceeds, such that the entire amount of Disposition Proceeds will be used by the City in compliance with Treasury Regulation § 1.141-12(e).

2.3.2. Alternative Project. The City has identified at least \$5,900,000 of capital infrastructure projects located within the Merged Downtown Redevelopment Project Area, and intends to use the Disposition Proceeds within two years after the date hereof to finance such projects (collectively, the “**Alternative Project**”).

2.3.3. Issuer’s Reasonable Expectations. The City reasonably expects to spend the Disposition Proceeds on the Alternative Project within two years after the date hereof.

2.3.4. Change in Expectations. To the extent that the City determines it cannot spend the Disposition Proceeds on the Alternative Project within two years after the date hereof, Bond Counsel has advised that it will be necessary to take remedial action by using any unspent Disposition Proceeds to (i) redeem or defease the portion of the 2015 Refunding TABs allocable to financing or refinancing the 800 K Properties (the “**Nonqualified 2015 TABs**”) or (ii) purchase and cancel the portion of the outstanding non-callable 2005 TABs allocable to financing the 800 K Properties (the “**Nonqualified 2005A TABs**”). To the extent that the amount of unspent Disposition Proceeds is greater than the Nonqualified 2015 TABs, and it is not possible to use such amounts to purchase and cancel the Nonqualified 2005A TABs, then it will be necessary to approach the Internal Revenue Service pursuant to its Voluntary Closing Agreement Program in order to seek remedial action, as the outstanding 2005A TABs are non-callable bonds not eligible for defeasance.

To the extent the Nonqualified Bonds are to be redeemed, purchased and cancelled, or defeased pursuant to this section, the weighted average maturity of the redeemed, purchased and cancelled, or defeased bonds must be at least as long as the weighted average maturity of all outstanding 2005A TABs and 2015 Refunding TABs allocable to financing or refinancing the 800 K Properties.

2.4. Ongoing Compliance. Except as described in this Supplemental Tax Certificate, the Issuer has complied with the terms of the Original Tax Certificate. The 2005A TABs and 2015 Refunding TABs are not currently under examination by the IRS, and the tax-exempt status of the 2005A TABs and 2015 Refunding TABs are not at issue in any court proceeding and is not being considered by the IRS Office of Appeals.

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Dated: _____, 2016

CITY OF SACRAMENTO

By _____

REDEVELOPMENT AGENCY SUCCESSOR
AGENCY OF THE DISSOLVED
REDEVELOPMENT AGENCY OF THE CITY OF
SACRAMENTO

By _____

SACRAMENTO CITY FINANCING AUTHORITY

By _____