

CITY OF NATIONAL CITY, CALIFORNIA
COUNCIL AGENDA STATEMENT

MEETING DATE: August 16, 2016

AGENDA ITEM NO. 1

ITEM TITLE:

Resolution of the City Council of the City of National City approving the Final Audit Report for the Morgan Square Business Improvement District for the period from January 1, 2008 through and including June 30, 2014. (Planning)

PREPARED BY: Raymond Pe, Principal Planner

PHONE: 336-4421

DEPARTMENT: Planning Division

APPROVED BY: 

EXPLANATION:

Background report attached.

FINANCIAL STATEMENT:

The Successor Agency will recover \$54,006.92 in attorney's fees from the settlement. The remaining funds in the PBID will be refunded in accordance with Str & Hwy Code 33671.

APPROVED: 

Finance

APPROVED: _____

MIS

ACCOUNT NO.

ENVIRONMENTAL REVIEW:

This action is not subject to the California Environmental Quality Act since it is not a project as defined in the California Code of Regulations, Section 15378.

ORDINANCE: INTRODUCTION:

FINAL ADOPTION:

STAFF RECOMMENDATION:

[Adopt the resolution approving the Final Audit Report]

BOARD / COMMISSION RECOMMENDATION:

Not applicable.

ATTACHMENTS:

1. Background Report
2. Settlement Agreement
3. Declaration of Ditas Yamane
4. Final Audit Report

Attachment 1

Background Report

The Morgan Square Property and Business Improvement District was formed on August 3, 2004, pursuant to the California Property and Business Improvement District Law of 1994 (Sts & Hwy Code Section 36600 et seq., "PBID Law"). The District was established to provide for the maintenance, operations, and servicing of certain improvements in the District, which generally includes parcels with frontage on National City Boulevard and Roosevelt Avenue between 2nd Street and 12th Street and on 8th Street between Interstate 5 and D Avenue.

On March 8, 2005, the Community Development Commission and National City Morgan Square, Inc., entered into an agreement for the administration and operation of the District pursuant to the Management District Plan and PBID Law. Subsequently, the City transferred approximately \$1,163,000 collected from the levy of assessments in the District to Morgan Square. In return, Morgan Square was to utilize these funds as set forth in the Agreement for activities and services in the District.

The District expired by its own terms in 2010 in accordance with the PBID Law. No action was taken by any of the Parties to renew the District, and it has not been renewed. On June 25, 2013, the City and the Successor Agency filed suit against Morgan Square for breach of the agreement and violation of the PBID Law based upon: (1) not providing certain accounting records and documentation to the City; and (2) upon expiration of the District, not taking steps to refund the remaining District Funds in Morgan Square's possession to the assessed property owners.

In September 2013, on the City's motion, the Superior Court for the County of San Diego issued a temporary restraining order to restrict the use of funds within Morgan Square's possession. In November 2013, an injunction was ordered by the Court prohibiting Morgan Square from using the District funds other than for a specific use approved by the Court, that being payment for Court approved legal expenses incurred by Morgan Square.

Subsequently, the Parties negotiated a Settlement Agreement and Release, which was approved by the City Council on December 15, 2015 and the Oversight Board of the Successor Agency on April 20, 2016. Under the terms of the Agreement:

1. Morgan Square shall prepare and submit a final audit to the City.
2. Morgan Square shall return the funds to the City.
3. The City will refund the funds in accordance with PBID Law.
4. The Successor Agency and the City shall recover \$54,006.92 in attorney's fees, payable from the funds.

Pursuant to the Settlement Agreement, Morgan Square has prepared the Final Audit Report for the period from January 1, 2008 through and including June 30, 2014. The

proposed resolution would approve the Final Audit Report for the Morgan Square Business Improvement District. Morgan Square is obligated to return all District Funds in the possession of Morgan Square to the City.

Final Audit

The Final Audit was prepared by the same firm that had previously performed the audits for the Morgan Square PBID. The audit report includes; statement of assets and net assets as of June 30, 2014 (with a comparison from January 1, 2008); statement of revenue and expenses for the 6-1/2 years ended June 30, 2014; statement of functional expenses for the 6-1/2 years ended June 30, 2014; schedule of payments received from the City and deposited to Morgan Square for the period of January 1, 2008 through April 10, 2010; and, cash transactions for the period of January 1, 2008 through June 30, 2014 (which includes the years in which the audit report was due as alleged in the litigation). The Final Audit, if approved, completes the outstanding requirement of Morgan Square to prepare and provide such a report.

In addition to the Final Audit, a declaration has been provided by Ditas Yamane, bookkeeper for Morgan Square, certifying that there has been no activity related to expenses paid from the accounts since the time of the audit statement.

Conclusion

The Final Audit concludes there is \$256,589 in cash and equivalents as of June 20, 2014. The Stipulated Judgment requires Morgan Square to turn over \$256,589 to the City. Once received, the City can return those monies to the property owners in accordance with PBID law.

Staff Recommendation

Approve the Final Audit Report.